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No. 237. A.B.

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Brf. of Waggener & Horton for Appts. (mo.)

IN THE SUPREME COURT

OF THE UNITED STATES.

Filed Oct. 24, 1898.

CHARLES U. COTTING, *Appellant*,
vs.
KANSAS CITY STOCK YARDS COMPANY, A CORPORATION, ET AL., *Appellee*.

FRANCIS LEE HIGGINSON, *Appellant*,
vs.
KANSAS CITY STOCK YARDS COMPANY, A CORPORATION, ET AL., *Appellee*.

No. 237.
October Term, 1898.

STATEMENT OF THE APPELLANTS (COMPLAINANTS BELOW) ANSWERING THE MOTION FOR ADVANCEMENT.

ALBERT H. HORTON,
Of Counsel.

B. P. WAGGENER AND
ALBERT H. HORTON,
Solicitors for Appellants.

OCTOBER 22, 1898.

CRANE & CO., TOPEKA.

IN THE SUPREME COURT
OF THE UNITED STATES.

CHARLES U. COTTING, *Appellant*,
vs.
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No. 237.
October Term, 1898.

STATEMENT OF THE APPELLANTS (COMPLAINANTS BELOW) ANSWERING THE MOTION FOR ADVANCEMENT.

THE appeal in the above causes consolidated for trial was perfected in this court on January 31, 1898, the case having been docketed on that date as No. 576, of October Term, 1897. No motion was presented to the appellants or their counsel or filed in this court by Hon. Louis C. Boyle, Attorney General of the State of Kansas, for the advancement of the above causes for a hearing at an early day, until the filing of the

present motion a few days ago, notice of which was served on the 14th instant. We understand that the causes will be reached for hearing in January, 1899, or soon thereafter, on the regular call of the docket. Therefore, the motion to advance is unnecessarily filed and presented at this time, because there will be given to the Attorney General of the State of Kansas a speedy hearing of the appeal in the regular call of the docket of this court.

Again, if the Attorney General had desired any advancement of the said causes for hearing at a very early day, such a motion ought to have been filed and presented to this court soon after the causes (consolidated) were docketed in this court on January 31st, 1898. The appellants have always been willing to fully comply with the written stipulation of the parties of the date of October 7, 1897, and also with the directions of Judges Thayer and Foster, as set forth in the opinions filed by them. But just now, the pressing professional engagements of the solicitors and counsel of the appellants are such as to render it impossible for them or either of them to prepare their briefs in said causes for service upon the adverse parties and presentation to this court before the time the cases

will be reached in the regular call of the docket in January, 1899.

The appellants desire, through their counsel, to present oral argument upon the hearing of the appeal, and it will be utterly impossible for counsel to be present to argue such appeal before the holiday recess. The Attorney General having delayed from January 30, 1898, to this late day in suggesting to us or in making any application to this court to advance the hearing of the appeal, and as the present motion is filed only two or three months before the appeal will be heard in the regular call of the docket, we do not think the motion to advance is entitled at this time to serious consideration.

No beneficial result will accrue to the Attorney General or the State of Kansas by the granting of his motion to advance. The motion is not verified, and therefore its averments, excepting those referring to matters in the record, cannot be accepted as testimony, when controverted, as they are, by the affidavit on file and hereinafter referred to.

Further, the interests of the parties have changed materially since the appeal was perfected in this court. Soon after this appeal was taken, the Kansas City Stock Yards Company, for the

purpose of reducing to as small a sum as possible the amount which might be recovered against it for charges in excess of those provided by the law of Kansas (the validity of which is in question in this suit), should this court decide the law of Kansas of 1897 to be a constitutional and a valid one, on the first day of December, 1897, reduced its charges for feed to the amount fixed by that law. The company, whose yards, as appears in the record of this cause, were partly in Missouri and partly in the State of Kansas, also arranged to have all cattle (except quarantine cattle) received and yarded at the yards in the State of Missouri, and without the jurisdiction of the State of Kansas. All other live stock, except hogs, were also received and yarded in the State of Missouri; this change, so far as related to cattle other than quarantine cattle, was effected in January, 1898; and on July 1st, 1898, the charges for receiving and yarding hogs were reduced to the amount fixed by the Kansas law, and such charges have ever since continued in force.

To better carry into effect the above arrangements, and to more satisfactorily and conveniently handle, yard and feed all cattle and other live stock shipped to Kansas City, in June, 1898, two new

corporations were formed under the laws of the State of Missouri—one solely to conduct the quarantine yards, to which were sold and conveyed the yards situated in the State of Kansas, the other for the purpose of transacting all the business of the stock yards, other than that relating to quarantine cattle, to which was also sold and conveyed that portion of the yards of the old stock yards company lying wholly in the State of Missouri. The amount of any alleged excess charges could not under the circumstances amount to more than about thirty thousand dollars per annum. This statement is made upon the supposition that this court will not hold that the price for yarding and caring for cattle and other live stock in the State of Missouri is subject to the prices fixed by the Kansas law.

Therefore, while important legal questions are involved in these causes, it cannot be said that large public interests are necessarily interested therein. The statement in the motion that "the excess over the statutory charges exacted or received by the Kansas City Stock Yards Company already amounts to about $450,000," is grossly incorrect. As the two new Missouri corporations handling live stock have yarded and fed since

June, 1898, and will continue to yard and feed all live stock shipped to the stock yards at Kansas City from Kansas or elsewhere, the early disposition of the above causes is not now so important to the Attorney General or the people of the State of Kansas, as if the Kansas City Stock Yards Company, one of the defendants in error, continued to handle, yard and feed live stock.

Since June, 1898, all yardage or feeding of cattle or other live stock in the State of Kansas by the Missouri corporations referred to have been in full compliance with the Kansas statute of 1897. Of course, the charges by the Missouri corporations for the handling, yarding and feeding of cattle and other live stock within the territorial limits of Missouri exclusively, cannot be subject to the jurisdiction of the Kansas statute. Such statute, it will be conceded, has no extra-territorial force upon a foreign corporation doing business in another State.

The bonds required of the Kansas City Stock Yards Company by the court below hearing the causes as a condition of the stay of all proceedings under the Kansas statute of 1897 until this appeal is disposed of, are fully adequate for all purposes,

and ample to protect all interests adverse to the appellants until such appeal is decided.

The motion refers to the fact that the record has not yet been printed. Soon after the appeal was perfected in these causes, a verbal stipulation was entered into between the counsel for the appellants and the Attorney General that parts of the record not necessary for the consideration of this court upon the errors referred to in the appeal should be omitted by the clerk in printing the record. The particular parts of the record to be omitted have not been as yet specifically designated. The Attorney General, of course, will now agree by written stipulation to have the parts of the record not necessary to be printed properly designated.

We call to the attention of the court in the consideration of the motion to advance, the affidavit of Charles F. Morse, of October 17th, 1898, on file in this court.

Wherefore, we respectfully ask that the motion to advance filed by the Attorney General ought not at this time to be allowed, as the causes so consolidated can be more conveniently presented

when the appeal is reached in the regular call of the docket of this court. This will not prevent the causes being heard and disposed of at an early day.

B. P. WAGGENER AND
ALBERT H. HORTON,
Solicitors for Appellants.

ALBERT H. HORTON,
Of Counsel.

No. 237. [illegible]

DEC 17 1898
JAMES H. McKENNEY, Clerk.

Brf. of Waggoner & Horton for Appt

Filed Dec. 17, 1898.

Supreme Court of the United States.

CHARLES U. COTTING, *Appellant*,
vs.
KANSAS CITY STOCK YARDS COMPANY, A CORPORATION, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, AND LOUIS C. BOYLE, AS ATTORNEY GENERAL OF THE STATE OF KANSAS, *Appellees.* } IN EQUITY.

FRANCIS LEE HIGGINSON, *Appellant*,
vs.
KANSAS CITY STOCK YARDS COMPANY, A CORPORATION, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, AND LOUIS C. BOYLE, AS ATTORNEY GENERAL OF THE STATE OF KANSAS, *Appellees.* } IN EQUITY.

No. 237.
OCTOBER TERM,
1898.

(Causes 7427 and 7453, U. S. C. C. Dist. of Kansas, First Division,—Consolidated.)

APPELLANTS' BRIEF,

IN OPPOSITION TO THE MOTION OF APPELLEE, LOUIS C. BOYLE, AS ATTORNEY GENERAL, TO DISMISS THE APPEAL HEREIN.

B. P. WAGGENER AND
ALBERT H. HORTON,
Counsel for Charles U. Cotting and Francis Lee Higginson, Appellants.

CRANE & CO., TOPEKA.

Accepted Service of the above Brief this Dec. 13th 1898,
L. C. Boyle

IN THE

Supreme Court of the United States.

CHARLES U. COTTING, *Appellant*,

vs.

KANSAS CITY STOCK YARDS COMPANY, A CORPORATION, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, AND LOUIS C. BOYLE, AS ATTORNEY GENERAL OF THE STATE OF KANSAS, *Appellees.*

IN EQUITY.

No. 237.

OCTOBER TERM, 1898.

FRANCIS LEE HIGGINSON, *Appellant*,

vs.

KANSAS CITY STOCK YARDS COMPANY, A CORPORATION, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, AND LOUIS C. BOYLE, AS ATTORNEY GENERAL OF THE STATE OF KANSAS, *Appellees.*

IN EQUITY.

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APPELLANTS' BRIEF,

IN OPPOSITION TO THE MOTION OF APPELLEE, LOUIS C. BOYLE, AS ATTORNEY GENERAL, TO DISMISS THE APPEAL HEREIN.

I.

STATEMENT.

THE motion to dismiss the appeal herein on the ground that there is a defect of necessary parties,

recently filed in this court by appellee, Louis C. Boyle, as Attorney General of the State of Kansas, is the second motion filed by him in this case in this court since the appellants docketed the appeal and filed the record thereof with the Clerk of this court.

On October 14, 1898, appellee, Louis C. Boyle, served a written notice upon the counsel of the appellants, as follows:

"IN THE SUPREME COURT OF THE UNITED STATES.

Charles U. Cotting, *Complainant*,
vs.
Kansas City Stock Yards Company, a corporation, Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, *Defendants*.

Francis Lee Higginson, *Complainant*,
vs.
Kansas City Stock Yards Company, a corporation, Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, *Defendants*.

No. 237.
OCTOBER TERM, 1898.

NOTICE OF MOTION TO ADVANCE.

To the Complainants and all the Defendants above named (except Louis C. Boyle, as Attorney General of the State of Kansas), and their respective counsel:

"You and each of you are hereby notified that on Monday, October 24, 1898, or as soon thereafter as the same can be heard, in said court, at Washington, D. C., a motion will be presented to advance said causes (consolidated) for hearing at an early day during the present term of said court and before the holiday recess, for reasons

stated in said motion, a copy of which is hereunto annexed.

L. C. BOYLE,
Attorney General.

DAVID MARTIN, of Counsel."

Upon receiving such notice, we accepted service thereof, and indorsed thereon the following:

"We hereby acknowledge service upon us of the foregoing notice of motion to advance, with a copy of said motion attached, this 14th day of October, A. D. 1898.—B. P. WAGGENER and ALBERT H. HORTON, *Counsel for Appellants.*"

A similar notice was served about the same time by appellee, Louis C. Boyle, upon the counsel for the Kansas City Stock Yards Company, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, designated by the Attorney General, as "defendants above named." Service of the notices on said parties was duly accepted by their counsel in writing.

The notices so served upon the counsel of appellants and also upon the counsel of the parties designated as "defendants above named," were filed in due time with the Clerk of this court, and the motion to advance was also duly printed and filed in due time with the Clerk. Thereby, the Stock Yards Company and the other appellees filed their appearance in writing in this court.

Appellee, Louis C. Boyle, duly entered his appearance in this court in the above appeal by David Martin, his counsel, who also appeared personally in this court on October 24, 1898, as counsel for said appellee.

After the subpœnas issued in said cases had been duly served upon all of the defendants below, including the Kansas City Stock Yards Company, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, and after the last-named defendants were in default, upon due proceedings being had, a formal decree *pro confesso* in each case was duly entered in favor of complainants below and against the last-named defendants.

On October 28, 1898, judgment was rendered and a final decree entered, "that the said bills of complaint herein, and each of them, be and the same are hereby dismissed, with costs taxed in favor of defendant Louis C. Boyle, as Attorney General of the State of Kansas."

At the rendition of the judgment against appellants (complainants below), and the entry of the final decree, an appeal was duly taken by appellants in open court. The record on file in this

case shows that the appeal was duly allowed in open court at the same term at which the decree was entered. The record recites that "the complainants, by their solicitors, duly excepted at the time in open court to the order and decree of said court dismissing said bills of complaint and each of them, and thereon in due form prayed for an appeal in each case, which said appeal is duly allowed, and the amount of the appeal bond to be given by the complainants with one or more sureties is fixed at $1,500." (Extracts, 56, 57.)

The appeal bond was duly given in proper time. The Kansas City Stock Yards Company on October 28th, 1897, gave a bond in the sum of $200,000 for the purpose of staying the operation of the Kansas Act of March 3d, 1897. This was approved by Judge Amos M. Thayer, U. S. Circuit Judge, November 2d, 1897, and duly filed in the court below. (Extracts, 71, 72.) This was a waiver of notice of appeal and also an appearance in this court.

The appeal was docketed in this court and the record filed on February 4, 1898,—at a prior term of this court. Since then, Wallace Pratt, as counsel for all defendants below, except Louis

C. Boyle, has filed his written appearance in this court.

Attention is called in the brief of appellee, Louis C. Boyle, to the fact that the judgment rendered against the appellants and the final decree of October 28, 1897, were of the same date as the formal decree *pro confesso* entered against certain of the defendants below. This court, however, must assume upon the record on file that the decree *pro confesso* was prior in point of time to the judgment rendered against appellants, although entered on the same date.

It is claimed by appellee, Louis C. Boyle, that notwithstanding a decree *pro confesso* was entered against the Kansas City Stock Yards Company, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, that the final decree of October 28, 1897, "ordering, adjudging and decreeing that the said bills of complaint herein and each of them be and the same are hereby dismissed, with costs taxed in favor of defendant Louis C. Boyle, as Attorney General of the State of Kansas," is "a joint decree of dismissal in favor of all the defendants" (below), and that as "no citation has ever been issued,

except against Louis C. Boyle, and as his co-defendants are not named therein, or parties to the appeal," he insists the appeal should be dismissed, on the ground that there is a defect of necessary parties.

In this connection, we call attention to the following statement made on page 6 of the brief of said appellee, Louis C. Boyle: "On account of haste in bringing the action, it seems doubtful if Equity Rule 94 had been sufficiently complied with." Evidently this statement was made inadvertently by Mr. Boyle. It appears from a written stipulation signed by him that—

"The defendant Boyle, as Attorney General, admits that there was no collusion between the complainants in the above-entitled suits, and the defendant the Kansas City Stock Yards Company, or any of its officers, directors or attorneys, solicitors or counsel in respect to the bringing or prosecution of the said bills or either of them, and that the said bills were not, when the same were exhibited, and are not collusive to confer upon a court of the United States, jurisdiction of the said causes." (Extracts, p. 53.)

Why such statement should be interjected in the brief of Mr. Boyle does not seem apparent. It has no connection with the motion filed by him, or any matter involved therein.

II.

IF THERE IS ANY QUESTION ABOUT THE FACTS ON WHICH THE MOTION RESTS, THEN, AS THE RECORD IS NOT PRINTED, THE MOTION TO DISMISS THE APPEAL OUGHT TO BE POSTPONED UNTIL THE CASE IS HEARD ON ITS MERITS.

The appeal was docketed in this court on February 4th, 1898, and the record thereof has been on file in this court since that date. Yet, as late as October 14, 1898, appellee, Louis C. Boyle, never claimed or suggested to this court, by motion or otherwise, that there was a defect of necessary parties to the appeal taken by the appellants. On the other hand, on October 14th, 1898, he served a notice of his motion to advance the hearing of said appeal "at an early day during the present term of said court, and before the holiday recess." In his notices and motion printed and filed, he named all of the original defendants in both cases as appellees, and served notices upon the counsel of all of the defendants in both cases, excepting, of course, himself. His motion to advance and the notices thereof were had upon the theory that all of the defendants in both cases in the United States Circuit Court were parties to the appeal, and were before this

court. He indorsed his notices and motion to advance as follows:

"No. 237.—October Term, 1898.—Charles U. Cotting *v.* K. C. Stock Yards Co. *et al.*—Francis Lee Higginson *v.* K. C. Stock Yards Co. *et al.*—Motion to Advance.—L. C. Boyle, Attorney General. David Martin, of Counsel."

In answer to the notices served, counsel for appellants appeared in this court on October 24th, 1898, and thereupon were notified in open court by the counsel of Mr. Boyle that the motion to advance would not be presented to the court. The counsel of the Kansas City Stock Yards Company, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, were, as before stated, also served with notices of the motion of Mr. Boyle to advance the appeal for an early hearing, and, as before stated, accepted in writing service of such notices and motion, and duly appeared thereby in this court in the appeal herein, as such written acceptances of notices and motion were duly filed in this court. The said Louis C. Boyle having entered his general appearance in this court in the appeal, and having filed his motion for the advancement of said appeal "for a hearing at an early day during the present

term of said court," all questions of mere errors or irregularities in such appeal, if any are apparent (which we deny), have been waived. He has waived all matters that can be waived by a general appearance of an appellee in this court.

Buckingham v. McLean, 13 How. 150.

On October 24th, 1898, Louis C. Boyle was permitted to withdraw his motion to advance the hearing of the appeal which had been filed by him in this court. But no application was made by him to withdraw his general appearance and enter a special appearance. In his motion to dismiss, he attempts to make a special appearance only, but this will not now avail him anything. The judgment and final decree were rendered on October 28th, 1897. The appeal reached this court before the end of the term to which it was made returnable, namely, on February 4th, 1898, when the same was duly docketed and filed.

Radford v. Folsom, 123 U. S. 725.
Dodge v. Knowles, 114 U. S. 430–438.

A general appearance cannot be changed to a special appearance so as to affect the rights of parties, without the consent of court.

The appeal will be reached in the regular call of the docket in March or April of the present

term of this court. The appellee, Louis C. Boyle, has caused a part of the transcript of the record to be printed to accompany his brief upon his motion to dismiss, but he has omitted to print from the transcript the pleadings filed by him in the court below, and has also omitted other parts of the transcript, which under some circumstances, might be considered material to be presented to this court upon this motion.

If there is any question about the facts, the motion must necessarily be postponed for hearing until the appeal is reached in the regular call of the docket. Then the record will be printed, and the court will have all the facts before it in a convenient form.

In *National Bank v. Insurance Company*, 100 U. S. (10 Otto) 43, it was observed by the Chief Justice:

"The further consideration of this motion is postponed until the case is heard on its merits. The record has not been printed, and counsel do not agree as to what it contains. We will not decide motions to dismiss before the record is printed when there is any question about the facts on which the motion rests. In order to get a decision before printing, motion papers must present the case in a way which will enable us to act understandingly without referring to the transcript on file."

III.

THE BRIEF OF THE APPELLEE UPON HIS MOTION TO DISMISS, EXAMINED.

The appellee, Louis C. Boyle, has filed a printed brief in support of his motion to dismiss. His argument is divided into three heads:

1. An assumption that certain facts shown by the record are conclusive upon the question as to what defendants are or are not parties on this appeal.

2. That the final decree is joint in favor of all the defendants.

3. That the final decree being joint in favor of all the defendants, all the defendants must be parties to this appeal.

The facts on which said appellee, Louis C. Boyle, relies, as showing that he is the only appellee herein, as we understand from his brief, are as follows:

1. That a citation has been issued against him alone. (Brief, pp. 4. 13.)

2. That the appeal bond runs to him alone. (Brief, p. 28.)

3. That the indorsements on the $200,000 supersedeas bond and on the assignment of error

show that the appeal was intended to be taken against the Attorney General and no one else. (Brief, p. 29.)

Appellee, in his argument, assumes that certain facts are decisive of the question as to what parties have or have not been made appellees on this appeal. He cites no authorities in support of his assumption that such is the effect of these facts, even if his construction of them were the true one.

On this assumption,—false, as we believe, in the light of the authorities to which we shall presently refer,—appellee founds his argument as to the joint nature of the decree and the consequent necessity of all the defendants being joined as appellees.

And even if his assumption of the effect of these facts were correct, his argument as to the necessity for a joinder of all the defendants on this appeal is far from convincing. He cites a line of cases which, we submit, are not in point on the question in support of which they are cited. If they have any application at all on this motion, it is in favor of appellants and in opposition to the contention of appellee. All of these cases, with one exception, belong to a large class of cases holding that where a judgment or decree

is rendered against several, all against whom it is rendered must join in the appeal. Now, if as appellee contends (Brief, p. 16), the *pro confesso* decree must be disregarded, the only parties against whom the decree of the court was rendered were the two complainants, Charles U. Cotting and Francis Lee Higginson, and both of these parties have joined in the appeal; so that in bringing the appeal the complainants have brought themselves strictly within the doctrine of these cases. If there had been more than two complainants against whom the decree was rendered, the cases might have been applicable in support of the motion, if all such complainants had not joined in the appeal.

The single case cited by appellee not belonging to the above class of cases is that of *Miller v. McKenzie*, 10 Wall. 582. In that case, Pitzer Miller brought suit against four defendants. Judgment was rendered in favor of defendants. Plaintiff brought a *writ of error*, which recited that the proceedings were between "Pitzer Miller, Larkin McKenzie *and others.*" The court dismissed the case because all the parties were not named.

But this case was decided in 1870, before the

amendment of the Judiciary Act in 1872 (now §1005, Revised Statutes of the United States), permitting, among other amendments, an amendment in the statement of parties in the writ of error.

As we understand this statute, such a defect as is referred to in the above case may now be amended, if the facts are shown by the record.

This practice, we think, is applicable also to appeals, under Revised Statutes, § 1012, providing that—

"Appeals from the circuit courts and district courts acting as circuit courts, and from district courts in prize causes, shall be subject to the same rules, regulations and restrictions as are *or may be* prescribed in law in cases of writs of error."

Walton v. Marietta Chair Co., 157 U. S. 342, 347.

Knickerbocker v. Pendleton, 115 U. S. 339.

IV.

THE PRINTED EXTRACTS FROM THE RECORD, AS FURNISHED BY APPELLEE, LOUIS C. BOYLE, REFERRED TO.

Upon an examination of the record as printed in appellee's extracts from the transcript of the record and furnished by him for the purposes of this motion, we find the following facts:

1. *Pro Confesso Decree.*—All the parties are named, both in the title and in the body of the decree. (Extracts, p. 55.)

2. *Final Decree.*—The parties are all named in the title. In the body of the decree it is recited that "Now come the parties herein, and by their respective solicitors," &c. (Extracts, p. 56.)

3. The petition and allowance of appeal contains the names of all the defendants in the title. (Extracts, p. 58.)

4. In the assignment of errors all the defendants are named in the title, and the name of the defendant the Kansas City Stock Yards Company is frequently mentioned in the assignments as a party. (Extracts, p. 59.)

The indorsement on the assignment of errors as to parties is "Charles U. Cotting and Francis L.

Higginson *vs.* Louis C. Boyle, &c." (Extracts, p. 70.)

5. In the $200,000 supersedeas bond given by the Kansas City Stock Yards Company, all defendants are named in the title. (Extracts, p. 71.)

The indorsement on the supersedeas bond as to parties is "Charles U. Cotting and Francis L. Higginson *vs.* Louis C. Boyle." (Extracts, p. 72.)

6. The appeal bond names all defendants in the title and in the body of the bond. (Extracts, p. 72.)

It is in favor of Louis C. Boyle alone. (Extracts, p. 72.)

It is indorsed as to parties, "Charles U. Cotting and Francis L. Higginson *vs.* Louis C. Boyle, &c." (Extracts, p. 73.)

7. In the order for enlargement of time to docket the above case and file the record with the Clerk of the Supreme Court, all defendants are named in the title. (Extracts, p. 74.) It is indorsed, "Charles U. Cotting and Francis Lee Higginson *vs.* L. C. Boyle, Attorney General, *et al.*" (Extracts, p. 74.)

8. The only citation issued, so far as the record shows, runs to Louis C. Boyle, Attorney General of the State of Kansas. It is indorsed as to

parties, "Charles U. Cotting and Francis Lee Higginson *vs.* Louis C. Boyle, *et al.*"

We desire again to call attention to one important fact shown by the record, which appellee fails to mention in his brief, perhaps having overlooked it. It is this: That the final decree shows by its recitals that all the parties were in court at the rendition of said decree, and that the complainants then and there in open court, in due form, prayed an appeal, which appeal was at that time duly allowed. (Extracts, p. 12.) **This fact alone, as we think, is, under the decisions of this court hereinafter referred to, fatal to appellee's contention that there is a defect of necessary parties on this appeal.**

V.

IF AN APPEAL IS TAKEN IN OPEN COURT, AT THE SAME TERM AT WHICH THE DECREE IS ENTERED, NO CITATION TO ANY PARTY INTERESTED IN OR AFFECTED BY THE DECREE IS NECESSARY. THE APPEAL IN THE ABOVE-ENTITLED CAUSES HAVING BEEN TAKEN IN OPEN COURT, WHILE ALL THE PARTIES WERE PRESENT, WAS A NOTICE TO ALL PARTIES, AND THEREFORE NO CITATION TO APPELLEE LOUIS C. BOYLE OR ANY OTHER PARTY WAS NECESSARY.

1. *The chief fact upon which the appellee relies as showing that all the defendants against whom the final decree was rendered have not been made parties to this appeal is, that the citation has been issued against him alone.* (Brief, pp. 4, 13, 28.)

The learned counsel for appellee has evidently overlooked the most important fact in the record bearing on this motion, which is that *the final decree of the court below* (Extracts from Transcript, p. 57) *shows that the appeal was prayed and allowed in open court at the time of the rendition of said decree, while all the parties were present in court.* The bond was duly fixed in open court, and therein given and filed.

It is the well-established doctrine of this court, that when an appeal is so taken and bond is filed

at the same term, no citation is required; that the citation is not jurisdictional where the parties have notice otherwise of the appeal,—its only purpose being notice.

Brockett v. Brockett, 2 How. 238.
Reily v. Lamar, 2 Cranch, 344.
U. S. v. Vigil, 10 Wall. 423.
The San Pedro, 2 Wheat. 132.
Yeaton v. Lenox, 7 Pet. 220.
Villabolas v. U. S., 6 How. 81.
Dodge v. Knowles, 114 U. S. 430.
Hewitt v. Filbert, 116 U. S. 143.
Milner v. Meek, 95 U. S. 252.
Jacobs v. George, 150 U. S. 415.
Sage v Central R. R. Co., 96 U. S. 712.
First National Bank of Omaha, 96 U.S. 736.
Haskins v. Rld., 109 U. S. 106.

In the leading case of *Brockett v. Brockett*, *supra*, it was urged in support of the motion to dismiss the appeal, that there was a want of proper parties to the writ of error and citation. The court said:

"Another and last ground of exception is to the want of proper parties to the writ of error and citation. No writ of error lies in this case, but an appeal only; and the appeal having been made in open court, no citation was necessary. . . . We are of the opinion that the motion to dismiss

the appeal ought to be overruled, and it is accordingly overruled."

In *Reily v. Lamar*, *supra*, Chief Justice MARSHALL, delivering the opinion of the court, remarked, "that the appeal having been prayed pending the term of the court below, no citation was necessary."

In *U. S. v. Vigil*, *supra*, the court said: "The want of a citation was mentioned on the argument as another ground of dismissal, but the answer is, the appeal was taken in open court, at the term in which the judgment was rendered. In such cases no citation is necessary."

In the case of *Milner v. Meek*, *supra*, one of the grounds urged for dismissal of the appeal was, "Because the other lien creditors, who were parties to the proceeding below, are not parties to the appeal."

The court said, in overruling this objection: "As to the second objection, it is sufficient to say that the appeal was allowed in open court during the term at which the decree was rendered. No citation was therefore necessary. *Milner alone appealed; but his appeal brings up so much of the case and such of the parties as are necessary for the determination of his rights.*"

In *Jacobs v. George*, *supra*, (1893,) it was observed: "It must be regarded as settled, that where an appeal is allowed in open court and perfected during the term at which the decree or judgment appealed from was rendered, no citation is necessary."

And in cases where a citation is necessary, to show that the appeal has not been abandoned, for the reason that security for appeal is taken out of court or after the term, and where, by accident, the citation has been omitted, a motion to dismiss an appeal allowed in open court and at the proper term will never be granted until an opportunity to give the requisite notice has been afforded.

Dodge v. Knowles, 114 U. S. 430.

We think, therefore, that under the decisions of this court, where an appeal was taken, as this appeal was taken, in open court, at the same term at which the decree appealed from was rendered, all the parties being present, and thus having full notice, the irresistible conclusion is, not only that no citation was necessary, but that all necessary parties are, by virtue of the notice of the appeal thus given to them in open court, before the Supreme Court on this appeal.

2. *The appeal bond, if not in proper form, may be amended, or a new bond may still be filed, if necessary.*

Edmonson v. Bloomshire, 7 Wall. 306.
Ex Parte The Milwaukee Rld. Co., 5 Wall. 188.
Martin v. Hunter, 1 Wheat. 304, and cases there cited.
2 Foster's Federal Practice, p. 1046, note 2.
Davidson v. Lanier, 4 Wall. 447–453.
Shepherd v. Pepper, 133 U. S. 626–644.
Seymour v. Freer, 5 Wall. 822.

The second fact on which appellee relies as showing a defect of parties herein is, that the appeal bond runs to the appellee, Louis C. Boyle, alone. (Brief, p. 28.)

We fail to see how the bond in its present form shows that any parties have been omitted from the appeal, or that there was any intention to do so on the part of the appellants.

All that it shows, if it shows anything, is that the appellants may possibly have filed a bond which does not protect all the parties against whom this appeal has been allowed.

But even if appellee were objecting to the form of the bond, which is not the case, this court will, under the above decisions, allow a new bond to be filed now, if necessary.

It may be said, however, that the omission to file a bond in favor of some of the appellees, is an objection which it would seem should come from those parties as being the only ones directly interested in having such a bond. If they do not complain, it would seem that there is no one else who should be permitted to do so. If any amendment to the appeal bond is necessary, or if a new bond is required, we are ready to amend as directed, or file a new bond.

3. *The fact that the indorsements on some of the papers forming a part of the record on this appeal do not contain the names of all the defendants, excludes no party from participating in this appeal.*

In addition to the failure to issue a citation against any defendant except the Attorney General, and to execute a bond in favor of all the defendants, appellee calls attention to another fact, which he thinks also shows an intention on the part of appellants to exclude necessary parties from participating in this appeal. He says (Brief, p. 29): "While the bond for $200,000 and the assignments of error recite the names of all the parties below in the title, yet the indorsements show that the appeal was in-

tended to be taken against the Attorney General and no one else."

The indorsement of parties on the supersedeas bond is, "Charles U. Cotting and Francis L. Higginson *vs.* Louis C. Boyle," and on the assignments of error it is, "Charles U. Cotting and Francis L. Higginson *vs.* Louis C. Boyle, &c."

Now, while in both of these indorsements, the only defendant named is Louis C. Boyle, yet in one of them the characters "&c." indicate that the parties filing that paper had in mind other parties defendant than Louis C. Boyle. From lack of space on the back of papers, the practice is to abbreviate the title in making the indorsements as much as possible. In the absence of a statute or rule of court,—and we have been unable to find any requiring the names of all parties to be set out in the indorsement,—there is nothing to condemn in this practice. The sole purpose of an indorsement on a paper is to facilitate its filing and use in the cause in which it is to be filed. The intention of a party in indorsing a paper is to carry out this purpose, and the law will not impute to him any other intention in making it, as contended by appellee.

It was said by the court in the case of *Miltenberger v. Logansport O. C. & S. R. R. Co.*, 106 U. S. (l. c.) 305:

"The appellees insist that the appeal should be dismissed for the alleged reason that the parties have not been named as either appellants or appellees on the docket of this court or in the transcript. But the order of January 22, 1879, allows the claims, specifying the persons to whom allowed, and the amounts, and the body of the order states that the plaintiffs in the cross-suit pray an appeal to this court; and the decree of July 3, 1879, orders the payment of the claims allowed by the order of January 22, 1879, and contains a prayer by the plaintiffs in the cross-suit for an appeal from said decree. These were appeals in open court, not requiring citations, and the order and the decree appealed from sufficiently designated all the appellees by name, and the appeals were appeals from the whole of the order and the whole of the decree."

But, even though it might be said that the indorsements referred to show that the appeal was intended to be taken against the Attorney General and no one else, as he contends, yet, as was said in the case of *Milner v. Meek*, 95 U. S. 252–258, already cited, "*Milner alone appealed; but his appeal brings up so much of the case and such of the parties as are necessary for the determination of his rights.*"

It is submitted that the record, of which we have made extracts in the preceding pages (pp. 2 and 3), shows that Louis C. Boyle is not, and was not intended to be the sole appellee on this appeal.

The *pro confesso* decree contains the names of all the parties, both in the title and in the body of the decree.

In the final decree the parties are all named in the title, and they are named by reference in the body of the decree. The defendant the Kansas City Stock Yards Company is expressly named in the body of the decree. It is recited in the decree that an appeal is allowed to complainants from the order of the court dismissing the bill in each of the two cases. The appeal, not being allowed as against any particular defendant, was allowed against all who would be affected by it.

Milner v. Meek, 95 U. S. 252–258.

The assignment of errors names all the defendants in the title, while in many of the assignments the Kansas City Stock Yards Company is named as a party.

In the $200,000 supersedeas bond, executed by the Kansas City Stock Yards Company, the defendants are all named in the title. It is dif-

ficult to see on what theory the court in its final decree required the Stock Yards Company to execute this bond, if it did not regard it as a party to the appeal.

In all the other papers filed in this appeal, viz., the petition and allowance of appeal, the appeal bond, and the order enlarging the time to docket the appeal in this court, the names of all the defendants are set out in the title.

The citation does not contain the title.

The indorsement of the parties on all of the papers except the supersedeas bond, gives the names of the defendants either as "Louis C. Boyle *et al.*" or "Louis C. Boyle, *&c.*," showing that Louis C. Boyle is not the only defendant in the mind of appellants. The indorsement on the supersedeas bond, as already noted, gives only the name of Louis C. Boyle as defendant.

The motion to advance filed in this court by appellee, Louis C. Boyle, on or about October 24th, 1898, and which was served upon the counsel of the complainants and the counsel of the Kansas City Stock Yards Company, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott

E. Richardson, had the names of all the defendants set out in the title, as follows:

"IN THE SUPREME COURT OF THE UNITED STATES.

Charles U. Cotting, *Complainant*,
vs.
Kansas City Stock Yards Company, a corporation, Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, *Defendants.*

No. 237.
OCTOBER TERM, 1898.

Francis Lee Higginson, *Complainant*,
vs.
Kansas City Stock Yards Company, a corporation, Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, *Defendants.*

(Causes 7427 and 7453, U. S. C. C. Dist. of Kansas, First Division,—Consolidated.)"

The counsel of the complainants, and also the counsel of the said Kansas City Stock Yards Company, Harry P. Child, Eugene Rust and Elliott E. Richardson, accepted service in writing of the notice of said motion; and when said notice and motion were so filed in this court by the appellee, Louis C. Boyle, such acceptance in writing was not only notice that the appeal was taken and pending in this court, but a waiver of service of any citation. "An indorsement by the counsel of the defendant in error on a bond given as security for costs on the writ of error is a waiver of service of a citation."

Pierce v. Cox, 9 Wall. 786.
2 Foster Fed. Pr., § 484, p. 1044.

After the final decree of October 28th, 1897, the Kansas City Stock Yards Company executed the supersedeas bond of $200,000, (Extracts, pp. 71, 72,) and had the same duly approved and filed. This was after the appeal in open court. Thereby the company had ample notice of the appeal, admitted itself a party thereto, and waived service of a citation, if one were necessary. By such action on its part, it is before this court, as a party to the appeal.

2 Foster's Fed. Pr., *supra.*

A general appearance in the Supreme Court without moving to dismiss is also a waiver of service of any citation. *U. S. v. Armejo*, 131 U. S. App. lxxxii; *Pierce v. Cox, supra; Buckingham v. McLean*, 13 How. 150; *Radford v. Folsom*, 123 U. S. 725.

4. *Giving to the facts in the record as to naming the parties, to which appellee refers, all the force which he contends they should have on the question as to appellant's intention as to bringing the appeal against him alone, yet, under the authority of Milner v. Meeks, 95 U. S. 258, Miltonberger v. Logansport Rld. Co., 106 U. S. 305, and the other cases cited herein, all parties necessary for the determination of this appeal are before this court.*

VI.

THE CASE OF "FROW v. DE LA VEGA," 15 WALL. 522, NOT APPLICABLE TO THE APPEAL HEREIN.

On page 14 of the brief of the appellee, Louis C. Boyle, the case of *Frow v. De La Vega*, 15 Wall. 552, is cited as decisive upon the contention that the dismissal of the bills in the court below applies as against all the defendants below, although the costs were taxed in favor of the Attorney General alone. (Extracts, pp. 56–58.) That case differs in many respects from this appeal. In the case cited, the party against whom the decree *pro confesso* was taken appealed. In this case, it appears from the allegations of the bills in the record that the Kansas City Stock Yards Company, its officers and employes, enforced the Kansas act of March 3d, 1897, (claimed to be void by the appellants,) through fear of criminal proceedings threatened by the appellee, Louis C. Boyle, the Attorney General of the State of Kansas. Neither the Stock Yards Company, nor Charles F. Morse, Harry P. Child, Eugene Rust, nor Elliott E. Richardson, the officers and employes of said company, make any complaint against the decree *pro confesso* taken against them. In the Frow case, it

is said that the defaulting defendant, by his default and the decree *pro confesso* against him, lost his standing in court; "that he will not be entitled to service of notices in the cause, nor to appear in any way; that he can adduce no evidence; and that he cannot be heard at the final hearing."

Admitting, for the purpose of the argument only, that a final decree dismissing the bills of the complainants properly framed, would dismiss the bills as to the defendants in default, as well as to the appellee, Louis C. Boyle, yet, as without objection the decree *pro confesso* was entered and is not now challenged and has never been challenged by any of the defaulting defendants or their counsel, can it be said to be of no force or effect? If the appellee, Louis C. Boyle, had called attention in the court below to any incongruity in the decrees taken against the defendants below, the court might have so framed the final decree as to dismiss the bills against the defendants in default, as well as the appellee, Louis C. Boyle, but this was not done. Can the appellee, Louis C. Boyle, in this court complain now of the decree *pro confesso* taken against the Kansas City Stock Yards Company and its officers

and employes, who were made defendants? We think not. If the Kansas City Stock Yards Company, its officers and employes, who were defendants below, could not, after their default, "appear in any way in the court below, or adduce any evidence, or be heard at the final hearing," can it be said under the decrees that were taken, without any objection by the appellee, Louis C. Boyle, that they can now be heard in this court under the ruling in *Frow v. De La Vega, supra?* If they cannot be heard here, are they or either of them necessary parties in this court?

Irregularities, if any occurred in the proceedings as to the decree *pro confesso*, are not now before the court for adjudication. The parties against whom such decree was rendered are not complaining.

VII.

CONCLUSION.

In conclusion, it may be said that, even if the appeal had not been duly allowed in open court, thus dispensing with the necessity of a citation, the facts are that all the complainants joined in the appeal.

Defendant Louis C. Boyle was confessedly served with notice by the citation. He also entered an appearance at this term of court by filing a motion to advance the hearing of this appeal. His entry of appearance for that motion was general and not special "for the purposes of the motion only," and his subsequent withdrawal of that motion does not have the effect of withdrawing this appearance.

The Kansas City Stock Yards Company, by giving the supersedeas bond for $200,000, in conformity with the conditions of the decree, thus acknowledged its notice of the appeal and made itself a party thereto.

The other defendants, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, were really nominal parties only, being officials

of the defendant Stock Yards Company, and hence were not necessary parties to the appeal.

Further, the Kansas City Stock Yards Company, Charles F. Morse, Harry P. Child, Eugene Rust and Elliott E. Richardson accepted notice in writing of the motion of appellee, Louis C. Boyle, to advance the appeal for an early hearing in this court, and thereby entered their general appearance in this court. They are not complaining of the failure to issue any citation against them, or the want of notice of the appeal. In this connection we also call attention to the general appearance to the appeal on file in this court, of Wallace Pratt, as counsel for the Kansas City Stock Yards Company, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson. Therefore, these parties are before this court upon their voluntary appearance herein, after having had full notice of the appeal.

If there are any defects in the indorsements, bond, or other proceedings, the appellants are entitled under §§ 1005 and 1012, Rev. Statutes of the United States, (2d ed., 1878,) to remedy the same by proper amendments.

Insurance Co. v. Pendleton, 115 U. S. 339.
Walton v. Marietta Chair Co., 157 U. S. 342.

However, it is not necessary to press these points, in view of the fact that the appeal was prayed and allowed in open court, at the time of rendering the decree, as recited therein. (Extracts, pp. 56, 57.)

Respectfully submitted.

B. P. WAGGENER AND
ALBERT H. HORTON,

Counsel for Charles U. Cotting and Francis Lee Higginson, Appellants.

No. 237, A.B. 4

FILED
JAN 16 1899
JAMES H. McKENNEY,
Clerk.

Br. of Waggener & Horton for Appts

IN THE

Supreme Court of the United States.

Filed Jan. 16, 1899.

CHARLES U. COTTING, *Appellant*,

vs.

KANSAS CITY STOCK YARDS COMPANY, A CORPORATION, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, AND LOUIS C. BOYLE, AS ATTORNEY GENERAL OF THE STATE OF KANSAS, *Appellees.*

IN EQUITY.

FRANCIS LEE HIGGINSON, *Appellant*,

vs.

KANSAS CITY STOCK YARDS COMPANY, A CORPORATION, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, AND LOUIS C. BOYLE, AS ATTORNEY GENERAL OF THE STATE OF KANSAS, *Appellees.*

IN EQUITY.

No. 237,
OCTOBER TERM,
1898.

(Causes 7427 and 7453, U. S. C. C. Dist. of Kansas, First Division,— Consolidated.)

APPELLANTS' BRIEF,

IN SUPPORT OF THEIR MOTION FOR A. A. GODARD, THE PRESENT DULY ELECTED, QUALIFIED AND ACTING ATTORNEY GENERAL OF THE STATE OF KANSAS, TO BE SUBSTITUTED IN THE PLACE OF LOUIS C. BOYLE, THE FORMER ATTORNEY GENERAL OF SAID STATE, AS A PARTY HEREIN.

B. P. WAGGENER AND
ALBERT H. HORTON,
Counsel for Charles U. Cotting and Francis Lee Higginson, Appellants.

KRAMER & CO., TOPEKA

IN THE

Supreme Court of the United States.

CHARLES U. COTTING, *Appellant*, *vs.* KANSAS CITY STOCK YARDS COMPANY, A CORPORATION, ET AL., *Appellees*.	No. 237. OCTOBER TERM, 1898.
FRANCIS LEE HIGGINSON, *Appellant*, *vs.* KANSAS CITY STOCK YARDS COMPANY, A CORPORATION, ET AL., *Appellees*.	

NOTICE.

To Hon. A. A. Godard, as Attorney General of the State of Kansas:

You are hereby notified that the appellants above named will move the Supreme Court of the United States, at its rooms at the Capitol, in Washington, D. C., on Monday, January 16th, 1899, at twelve o'clock, M., or as soon thereafter as counsel can be heard, for an order substituting you as Attorney General of the State of Kansas in the place of Louis C. Boyle, the defunct Attorney General of the State of Kansas, as one of the appellees in said appeal; and you are further notified that said appellants will pray for an order of revivor of said appeal as against you as Attorney General of the State of Kansas, and that the said cause be continued against you and

the other appellees, excepting the said Louis C. Boyle, late Attorney General.

Annexed hereto is a copy of said motion, a copy of the affidavit of Albert H. Horton, and a copy of the brief in support of said motion.

B. P. WAGGENER and
ALBERT H. HORTON,
Counsel for Appellants.

January 10, 1899.

Accepted service of the above, January 10th, 1899.

A. A. GODARD,
As Attorney General of the State of Kansas.

I accept service of the above notice duly made me upon this 10th day of January, 1899.

WALLACE PRATT,
Counsel for the Kansas City Stock Yards Company, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, Appellees.

IN THE SUPREME COURT OF THE UNITED STATES.

Charles U. Cotting, *Appellant*,
v.
Kansas City Stock Yards Company, a corporation, et al., *Appellees*.

Francis Lee Higginson, *Appellant*,
v.
Kansas City Stock Yards Company, a corporation, et al., *Appellees*.

No. 237.
October Term, 1898.

NOTICE.

To Louis C. Boyle, late Attorney General of the State of Kansas:

You are hereby notified that the appellants above named will move the Supreme Court of the United States, at its rooms at the Capitol, in Washington, D. C., on Monday, January 16th, 1899, at twelve o'clock, M., or as soon thereafter, as counsel can be heard, for an order substituting Hon. A. A. Godard, the present duly elected, qualified and acting Attorney General of the State of Kansas, in your place as one of the appellees in said appeal, (you having retired from said office and being no longer Attorney General of the State of Kansas); and also for a further order that Hon. A. A. Godard, as Attorney General of the State of Kansas, shall be required to enter his appearance as an appellee in said appeal, and that the said appeal shall be revived and continued in the name of A. A. Godard as Attorney General of the State of Kansas, and of the other appellees named above, excepting yourself.

Upon said hearing, the appellants will offer as

testimony the affidavit hereto annexed, in support of said motion.

B. P. Waggener,
Albert H. Horton,
Counsel for Appellants.

January 10, 1899.

State of Kansas, Shawnee County, *ss.*

J. M. Stark, being first duly sworn, deposes and says that he served a copy of the above notice upon Louis C. Boyle in Topeka, Shawnee county, Kansas, by delivering to him personally the same on January 11th, 1899. J. M. Stark.

Subscribed and sworn to before me, this 12th day of January, A. D. 1899.

[seal.] D. H. Martin, *Notary Public.*
(My commission expires Sept. 6th, 1899.)

IN THE SUPREME COURT OF THE UNITED STATES.

Charles U. Cotting, *Appellant*, *vs.* Kansas City Stock Yards Company, a corporation, Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, *Appellees.*	In Equity. No. 237. October Term, 1898.
Francis Lee Higginson, *Appellant*, *vs.* Kansas City Stock Yards Company, Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, et al., *Appellees.*	In Equity.

(Causes 7427 and 7453, U. S. C. C. Dist. of Kansas, First Division—Consolidated.)

MOTION TO SUBSTITUTE A. A. GODARD, AS ATTORNEY GENERAL OF KANSAS, IN PLACE OF THE FORMER ATTORNEY GENERAL AS A PARTY TO THE APPEAL.

And now come the appellants, by their counsel B. P. Waggener and Albert H. Horton, and show to this court that at the commencement of the above-entitled suits in the court below, Louis C. Boyle was the Attorney General of the State of Kansas; that his term of office expired on Monday, January 9, 1899, and that about noon of said day, he retired from said office and gave possession of the books, papers and records thereof to his successor, Honorable A. A. Godard; that on

said Monday, January 9, 1899, the said A. A Godard duly qualified as such Attorney General, and is now the duly elected, qualified and acting Attorney General of the State of Kansas, having full possession of said office and all of the books, papers and records thereof, and is authorized to be substituted in all actions and proceedings now pending against Louis C. Boyle, as Attorney General of the State of Kansas, as a party therein, to take his place as Attorney General of the said State of Kansas in all suits or other legal proceedings in the courts.

WHEREFORE, Said appellants suggest the official death of Louis C. Boyle as Attorney General of the State of Kansas on the record of this court, and pray an order that the Hon. A. A. Godard, as Attorney General of the State of Kansas, be substituted in said appeal in the place of Louis C. Boyle, the former Attorney General of the State of Kansas; and also, that said Hon. A. A. Godard, as said Attorney General, shall become a party appellee in said appeal within a time to be duly specified by the order of this court, and if the said Hon. A. A. Godard, as Attorney General of the State of Kansas, shall fail to become such party appellee within such specified time, then the said appellees shall be entitled to open the record, and on the hearing have the decrees in the above causes now pending in this court upon

appeal reversed, if the same be erroneous; and also pray for such further order against the said A. A. Godard, as Attorney General of the State of Kansas, as shall be meet and proper in the premises.

B. P. WAGGENER and
ALBERT H. HORTON,
Counsel for Appellants.

January 10, 1899.

IN THE SUPREME COURT OF THE UNITED STATES.

Charles U. Cotting, *Appellant*, *vs.* Kansas City Stock Yards Company, a corporation, Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, *et al.*, *Appellees.*	In Equity. No. 237. October Term, 1898.
Francis Lee Higginson, *Appellant*, *vs.* Kansas City Stock Yards Company, a corporation, Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, *et al.*, *Appellees.*	In Equity.

(Causes 7427 and 7453, U. S. C. C. Dist. of Kansas, First Division — Consolidated.)

Affidavit of Albert H. Horton.

State of Kansas, Shawnee County, *ss.*

Albert H. Horton, being first duly sworn, upon his solemn oath deposes and says:

That Louis C. Boyle was formerly Attorney General of the State of Kansas, and was such Attorney General until about noon, January 9, A. D. 1899; that about said time the said Louis C. Boyle retired from the said office of Attorney General, his term having then fully expired; that on said 9th day of January, 1899, Honorable A. A. Godard, who had been duly elected Attorney General of the State of Kansas at the November election in said State for 1898, duly qualified as such Attorney General, and is now the duly elected, qualified and acting Attorney General of the State of Kansas, having possession of said office and performing all the duties thereof.

And affiant further says, that he is informed and believes that the said A. A. Godard, as Attorney General of the State of Kansas, the suc-

cessor in office of Louis C. Boyle, will attempt to enforce, as against the Kansas City Stock Yards Company, its officers and agents, the provisions of chapter 240, Session Laws of 1897, complained of in the bills exhibited by the appellants in the court below, unless said chapter is declared by this court violative of the constitutional rights of the appellants, and as the said A. A. Godard, as Attorney General as aforesaid, is charged with the administration of said State enactment, he will so do unless prevented by the appeal pending in the above causes (consolidated) in this court.

ALBERT H. HORTON.

Subscribed and sworn to before me, this 10th day of January, 1899.

[SEAL.] D. H. MARTIN, *Notary Public.*

(My commission expires Sept. 6th, 1899.)

IN THE

Supreme Court of the United States.

CHARLES U. COTTING, *Appellant*, *vs.* KANSAS CITY STOCK YARDS COMPANY, A CORPORATION, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, AND LOUIS C. BOYLE, AS ATTORNEY GENERAL OF THE STATE OF KANSAS, *Appellees.*	IN EQUITY.	No. 237, OCTOBER TERM, 1898.
FRANCIS LEE HIGGINSON, *Appellant*, *vs.* KANSAS CITY STOCK YARDS COMPANY, A CORPORATION, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, AND LOUIS C. BOYLE, AS ATTORNEY GENERAL OF THE STATE OF KANSAS, *Appellees.*	IN EQUITY.	

(Causes 7427 and 7453, U. S. C. C. Dist. of Kansas, First Division.—Consolidated.)

APPELLANTS' BRIEF.

IN SUPPORT OF THEIR MOTION FOR A. A. GODARD, THE PRESENT DULY ELECTED, QUALIFIED AND ACTING ATTORNEY GENERAL OF THE STATE OF KANSAS, TO BE SUBSTITUTED IN THE PLACE OF LOUIS C. BOYLE, THE FORMER ATTORNEY GENERAL OF SAID STATE, AS A PARTY HEREIN.

I.

STATEMENT.

THE Kansas City Stock Yards Company, one of the appellees, is a private corporation of the

State of Kansas, incorporated for the purpose of "constructing, maintaining and operating union stock yards, and such buildings, hotels, railways, and switches as may be necessary for such purposes." The corporation commenced active operations on January 1, 1884. On December 31, 1896, there had been issued capital stock to the amount of the par value of $7,368,650.

In March, 1897, the Legislature of the State of Kansas passed an act relating to stock yards, published in the Session Laws of 1897, on pages 444–450, as chapter 240. This so-called act was approved March 3, 1897, and published March 12, 1897. The title of said chapter 240 is: "An act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing restrictions in the trade of dead animals, and providing penalties for violations of this act."

The Kansas City Stock Yards Company put in force the rates and prices prescribed by the act of March 3, 1897, and thereafter Charles U. Cotting and Francis Lee Higginson, the appellants, exhibited their bills in equity against the Stock Yards Company, its officers and agents, and Louis

C. Boyle, as Attorney General of the State of Kansas, to enjoin them from enforcing the provisions of the act of 1897.

Cotting and Higginson are citizens and residents of Massachusetts. As stockholders in the corporation named, they asked a decree enjoining the enforcement of the rates for yardage and the services therewith connected, and also the prescribed rates for grain sold in the yards of the corporation, upon the ground that the statute as applied to said corporation is repugnant to the Constitution of the United States. These bills were numbered 7427 and 7453. They were consolidated on April 2, 1897.

The following is a quotation from the fourth paragraph of each of the bills:

"That the said so-called act is now by the said defendant, Louis C. Boyle, as Attorney General of the State of Kansas, alleged to be in full force, virtue and effect as a valid law of the State of Kansas, the said so-called act providing among other things that it shall be the duty of the Attorney General to prosecute all violations of the provisions thereof." (Extracts, pp. 8–31.)

Subsequently, final decrees were rendered against appellants, complainants below. (Extracts, pp. 56, 57.)

The present appeal is duly prosecuted by the appellants against the Kansas City Stock Yards Company, the Attorney General of the State of Kansas, and other appellees.

On January 9, 1899, the official term of Louis C. Boyle, the former Attorney General, expired, and A. A. Godard is now, and has been since January 9, 1899, the duly elected, qualified, and acting Attorney General of the State of Kansas.

This is a motion to substitute A. A. Godard, as Attorney General of the State of Kansas, for Louis C. Boyle, the former Attorney General.

Notices of the motion to make A. A. Godard, as Attorney General of the State of Kansas, a party to the appeal herein have been duly served upon such Attorney General, and also upon Wallace Pratt, the counsel of all the other appellees, except Louis C. Boyle, who, having retired from office, is no longer connected with this case. As a matter of courtesy only, we served a notice of this motion upon Mr. Boyle, but as he is not the Attorney General of the State of Kansas, he has no further standing in this court to make any motion in the present or future progress of this case, or to file any brief, or to make any oral argument.

A. A. Godard, the present Attorney General, has filed his appearance herein, and is present in the court, through his counsel, ex-Judge D. M. Valentine, to be heard. We therefore have nothing whatever to do with Mr. Boyle as to this motion or any other motion that we shall hereafter present in this case. He is *functus officio.*

II.

AN APPEAL WILL NOT ABATE BY THE EXPIRATION OF THE TERM OF OFFICE OF THE APPELLEE, WHERE, AS IN THIS CASE, THERE IS A CONTINUING DUTY IMPOSED BY STATUTE, IRRESPECTIVE OF THE INCUMBENT.

The suits commenced by Cotting and Higginson were not against Louis C. Boyle as an individual, but against him as Attorney General of the State of Kansas,— that is, against him as an officer of the State, to prevent him, not individually, but as Attorney General, from enforcing an alleged unconstitutional enactment to the injury of the rights of the appellants. This appeal is against the office of Attorney General,— not against an individual.

While the suits were not against the State of Kansas, within the meaning of the eleventh amendment to the Constitution of the United States, yet they were brought to prevent the Attorney General of the State of Kansas from performing the duty required of him by section 8 of the Kansas act of March 3, 1897. The same duty imposed upon Louis C. Boyle, when he was Attorney General of the State of Kansas, by said

section 8, is now imposed upon A. A. Godard, as Attorney General of that State.

The presumptions are that an officer of the State will comply with the statutes of the State. A. A. Godard, in assuming the official position as Attorney General of the State of Kansas, on January 9, 1899, was called upon to perform all the duties of the office of Attorney General, the same as Louis C. Boyle would have done had he continued in office. The duties of Louis C. Boyle, as Attorney General, at the expiration of his term of service passed over to A. A. Godard, as Attorney General of the State of Kansas. The burdens laid down by Louis C. Boyle, when he retired from the office, were officially taken up by A. A. Godard, his successor in that office. A. A. Godard stepped into the official shoes of Louis C. Boyle.

The final decree dismissing the appeals of Cotting and Higginson did not provide that costs should be taxed in favor of Louis C. Boyle as an individual. They were taxed in favor of the Attorney General of the State of Kansas. (Extracts, pp. 56, 57.)

It cannot be properly contended, we think, that this appeal abates by the expiration of the term

of office of Louis C. Boyle, the former Attorney General, as in this case, under the Kansas act of March 3, 1897, there is a continuing duty upon the office of the Attorney General, irrespective of the incumbent. We think proceedings of the character commenced in the court below may be commenced against one Attorney General and terminated with another.

It is the duty of the new Attorney General to enforce the act of 1897 if the act is valid. That is the question for this court to determine. The United States Circuit Court of Kansas held the law constitutional, even if applied to the Kansas City Stock Yards Company. This court has jurisdiction of the appeal, and the new Attorney General, A. A. Godard, is the officer of Kansas to represent the office of the Attorney General, or to appear in behalf of his office, or to enforce said act of 1897.

In *Thompson v. The United States*, 103 U. S. (13 Otto) 480, 484, it was observed: "If the resignation of the officer should involve an abatement, we would always have the unseemly spectacle of constant resignations and reappointments to avoid the effect of the suit."

In this case, if the person occupying the office of Attorney General may prevent the appellants from having the appeal heard by resigning or retiring from office, then we would have the unseemly spectacle "of constant resignations and reappointments" to avoid an alleged erroneous decree of the U. S. Circuit Court from being appealed or reviewed after appeal.

In *Bowden v. Johnson*, 107 U. S. 251–264, the following appears in the opinion of the court:

"In June, 1878, Orson Adams was appointed receiver of the bank, in place of Bowden, the plaintiff. The decree of the circuit court was not made till January, 1879. The appeal to this court was taken in the name of Bowden, Adams not having been substituted as plaintiff. Adams became surety in the appeal bond, and thus treated the decree as valid and adopted the appeal. Adams now moves to be substituted as plaintiff and appellant in place of Bowden, without prejudice to the proceedings heretofore had. The appellees and their counsel first heard of the appointment of Adams from the papers served on the motion for substitution, and the appellees now move to dismiss the appeal, on the ground that none was ever lawfully taken. We think that the motion of Adams should be granted, and that of the appellees denied. Adams prosecuted the appeal in the name of Bowden, who was and

is in life, and has a representative capacity. The power of amendment to this extent is authorized by section 954 of the Revised Statutes. It is of the same character as that exercised by this court in *Gates v. Goodloe*, where a writ of error was sued out by two bankrupts after their discharge in bankruptcy, and this court, on a motion to dismiss the writ, and a counter motion by the assignee in bankruptcy to be substituted as the plaintiff in error, denied the former motion and granted the latter." (101 U. S. 612.)

In *Gates v. Goodloe, supra*, it was decided by this court that: "Where the defendant in error moved to dismiss a writ sued out by three partners, two of whom had previously received their discharges in bankruptcy, *on the ground that the assignee alone could prosecute it, the court grants the application of the latter to be substituted as the plaintiff in error.*"

In *Insurance Company v. Costa*, 32 La. An. 1, it was decided that, "where the term of office of a public officer, appellant in his official capacity, expires pending an appeal, his successor in office must be substituted as appellant."

This is certainly the well-established rule where "there is a continuing duty irrespective of the incumbent."

2181 In the Circuit Court of the United States for the District of Kansas, First Division.

CHARLES U. COTTING, Complainant, *vs.* KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants.	In Equity.	No. 7427.
FRANCIS LEE HIGGINSON, Complainant, *vs.* KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants.	In Equity.	No. 7453.

Causes consolidated.

Assignment of Error.

Now, on this 28th day of October, A. D. 1897, come the said complainants and each of them, by Waggener, Horton & Orr and D. R. Hite, their solicitors, and say that the decree in said cause is erroneous and against the just rights of said complainants and each of them, for the following reasons:

First.

Because the evidence showed that the necessary operation of the act of March 3, 1897, as applied to the defendant stock yards company and its property used for stock-yards purposes, would be to abridge the privileges and immunities of said defendant company, a citizen of the United States, contrary to the provision of section 1 of the fourteenth amendment to the Constitution of the United States, and thereby abridging the privileges and immunities of said complainants as stockholders in said company.

2182 Second.

Because the evidence showed the defendant stock yards company, being a private corporation, was, prior to the enactment of the act of March 3, 1897, relating to stock yards, and complained of in the bills of complaint filed herein, in the unrestricted enjoyment of the use of private property, and that said act devoted the property of said corporation to a public use without providing any machinery by which the value of such use might or could be ascertained, and failed to provide any compensation for such taking of private property of the Kansas City Stock Yards Company for public use.

Third.

Because the evidence showed that the necessary operation of the said act of March 3, 1897, if applied to the business of the Kansas City Stock Yards Company or to that company, would deprive the complainants herein and the said defendant stock yards company, and each of them, of their property without due process of law, contrary to the provisions of section 1 of the fourteenth amendment to the Constitution of the United States.

Fourth.

Because the court erroneously found that the operation of the act of March 3, 1897, complained of in the bills of complaint filed herein, would not, even if applied to the business of the Kansas City Stock Yards Company and to said company, deprive the complainants of a fair and reasonable return on their capital invested in said company and in the property thereof, and that the said act was not in violation of the fourteenth amendment to the Constitution of the United States or any provision thereof.

Fifth.

Because the evidence showed that the act of March 3, 1897,
2183 complained of in bills of complaint filed herein, was and is repugnant to the provision of section 1 of the fourteenth amendment to the Constitution of the United States, which provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws."

Sixth.

Because the court erroneously found and held in the said decree that the business of the defendant stock yards company was not in whole or in part interstate commerce and that the property owned and used by said company was not an instrument of such commerce.

Seventh.

Because the evidence showed that the act of March 3, 1897, complained of in the bills of complaint filed herein, was and is repugnant to that part of section 8 of article 1 of the Constitution of the United States which provides that "the Congress shall have power to regulate commerce with foreign nations and among the several States."

Eighth.

Because the evidence showed that the act of March 3, 1897, complained of in the bills of complaint filed herein, if applicable to the Kansas City Stock Yards Company or to the business in which it is engaged, was and is repugnant to sections 4386, 4387, 4388, 4389, and 4390 of the Revised Statutes of the United States.

Ninth.

Because the evidence showed that the act of March 3, 1897, as applied to the Kansas City Stock Yards Company or to the business in which it is engaged, was and is repugnant to an act entitled "An act to regulate commerce," enacted by the Congress of the United States approved February 4, 1887.

2184

Tenth.

Because the evidence showed that the act of March 3, 1897, complained of in the bills of complaint filed herein, if applied to the Kansas City Stock Yards Company or to its business, was and is repugnant to an act of Congress of April 9, 1884, entitled "An act to establish a bureau of animal industry, and to prevent the exportation of diseased cattle," etc., and amendments and acts supplemental thereto.

Eleventh.

Because the evidence showed that all of the feed sold by the Kansas City Stock Yards Company was sold and paid for in the State of Missouri, and yet the court erroneously found and held that the prices of such feed so sold and paid for in the State of Missouri are regulated and controlled by the act of legislature of March 3, 1897, relating to stock yards and complained of in the bills of complaint filed herein, and also erroneously found and held that said act applied to the sales of feed so sold and paid for in the State of Missouri.

Twelfth.

Because the court erroneously found and held that under the said act of March 3, 1897, relating to stock yards and complained of the bills of complaint filed herein, that the prices at which merchandise, such as hay and grain, dealt in and sold by the stock yards company are controlled and regulated thereby, and that said stock yards company had no power or authority to sell hay or grain or any other article of feed in the State of Kansas at any price in excess of that prescribed by the said act of March, 3, 1897.

Thirteenth.

Because the court erroneously found and held that the act of March 3, 1897, relating to stock yards and complained of in
2185 the bills of complaint filed herein, has extraterritorial force, and that the prices of such articles as hay and grain sold by the Kansas City Stock Yards Company in the State of Missouri are fixed, regulated, and controlled thereby.

Fourteenth.

Because the court erroneously found that the said act of March 3, 1897, relating to stock yards and complained of in the bills of complaint filed herein, applied to charges made by the defendant

stock yards company for the use of its property situated wholly within the State of Missouri.

Fifteenth.

Because the court in its final decree and in the written decision handed down in support of said decree erroneously found and held that the act of March 3, 1897, relating to stock yards and complained of in the bills of complaint filed herein, was valid and applicable to all the business of the Kansas City Stock Yards Company, including all its business transacted in Kansas and in the State of Missouri, embracing also the charges for yardage in the State of Missouri and the sales of hay and grain made in the last-named State.

Sixteenth.

Because the evidence showed that the present value of the property of the Kansas City Stock Yards Company used exclusively for stock-yards purposes, as a completed structure or unit, was and is over $9,500,000, yet the special master in his report erroneously fixed the present value of the property of the Kansas City Stock Yards Company used and operated for stock-yards purposes as a dead structure and in segregated parts only, and such valuation in such form was erroneously approved by the court, and the court erroneously valued said property in the same way and refused to value said plant or property of the Kansas City Stock Yards Company as a completed structure or as a unit or as a going concern,
2186 and erroneously refused to value or consider as of any value the connections that said Kansas City Stock Yards Company had at and prior to the commencement of these suits and still has and then and now existing between such plant or system and the several beef and pork packing establishments connecting with and adjoining the said stock yards and the connections made and then and now existing between the said Kansas City Stock Yards Company and various common carries and railroads having connections therewith.

Seventeenth.

Because the court erroneously declined to find the value of the property of the Kansas City Stock Yards Company as a completed structure or as a unit or as an entirety or as a going concern, and adopted and acted upon the report of the special master as to the value of said property, which was appraised by him in segregated parts only.

Eighteenth.

Because the evidence showed that the tangible and intangible property of the Kansas City Stock Yards Company possessed a value in combination and from use which ought to have been recognized in estimating the present actual value of the plant and property of said company, and yet the court wholly ignored the value of the intangible property of said company and failed and

refused to give any value to the tangible and intangible property on account of its combination and use together as a unit in its operation and management.

Nineteenth.

Because the court (without any examination of the evidence offered and submitted upon the trial) founded its final decree solely and alone upon the findings of the special master filed in this court on August 24, 1897, and upon the alleged facts therein stated, when in truth and in fact findings numbers sixteen, forty-one, forty-three, forty-six, forty-seven, and forty-eight of said special master's report are not supported by the preponderance of the evi-
2187 dence or the weight of the evidence or by any competent evidence whatever, and all of the evidence in the record is contrary to and contradictory of each of said findings aforesaid.

Twentieth.

Because the court overruled the ninth exception of the complainants to the sixteenth finding of the master's report, when the evidence showed that the cash investment of the Kansas City Stock Yards Company in the property, the cost of which under the order of reference was to be ascertained by the master, amounted to the sum of $6,374,208.07.

Twenty-first.

Because the evidence showed that the cash investment made by the Kansas City Stock Yards Company in the property used and occupied by it for stock-yards purposes was at the commencement of these suits $6,374,208.07, when the court erroneously assumed, found, and held that such investment was only $3,852,361.81.

Twenty-second.

Because the court erroneously overruled the thirteenth exception of the complainants to finding number thirty-three of the master's report respecting the earnings and expenditures of the defendant stock yards company, when the said finding was contradicted by the stipulation of the parties filed herein and made "for the purpose of removing any question which may exist in regard to the manner in which the earnings of the stock yards company are or were disbursed."

Twenty-third.

Because said stipulation of the parties showed that the income of the Kansas City Stock Yards Company for 1896 amounted to the sum of $1,023,870.20, and that the expenditures out of the earnings for the same year for operating and maintaining its plant in a serviceable condition amounted to the sum of $537,543.70,
2188 and the court, wholly disregarding said stipulation, erroneously found and held said earnings and disbursements at

other and different sums and at a much less sum than that agreed to by the parties in writing.

Twenty-fourth.

Because the court erroneously overruled the sixteenth exception of the complainants to finding number thirty-five of the master's report, when the said finding was contrary to the stipulations of the parties produced before said master and also before said court.

Twenty-fifth.

Because the court erroneously overruled the eighteenth exception of the complainants to finding number thirty-seven of the master's report, when said finding was in direct conflict with the stipulation of the parties concerning the expenditures of the said Kansas City Stock Yards Company during the first five months of the year 1897.

Twenty-sixth.

Because the court erroneously overruled exception twenty-three of the complainants to finding number forty-three of the special master respecting the value of the property of the Kansas City Stock Yards Company, when the evidence showed that such property was at the commencement of these suits and still is of the value of more than $9,500,000.00, and said master's report erroneously showed the value of said property to be only $5,388,003.25, and the said court erroneously accepted the said so-called value of $5,388,003.25 as the present actual value of the said property in direct conflict with all of the evidence in the cause.

Twenty-seventh.

Because the court erroneously overruled exception twenty-eight of the complainants to finding number forty-eight of the special master respecting the market value of the outstanding capital stock of the defendant stock yards company, when the evidence
2189 upon this question showed that the market value of the outstanding stock during all of the year 1896 and immediately prior to the passage of the act of March 3, 1897, complained of in the bills of complaint filed herein, was more than $135 per share of the par value of $100, and the court thereon erroneously failed and refused to find that the value of the property of the Kansas City Stock Yards Company — based upon the amount for which the stock of the said corporation was bought and sold in the market.

Twenty-eighth.

Because the court erroneously declined to ascertain the value of the property of the defendant stock yards company by an examination of the evidence in the record, which conclusively showed the market value of the outstanding capital stock of the Kansas City Stock Yards Company during the year 1896 and immediately prior

to the passage of the act of March 3, 1897, complained of in the bills of complaint filed herein.

Twenty-ninth.

Because the court erroneously overruled the exceptions of the complainants to findings of the special master and each and all of said exceptions.

Thirtieth.

Because the evidence showed that the cost of reproducing the property of the stock yards company at the present time and also just before the commencement of these suits would have exceeded the sum of $9,500,000.00, and the court erroneously declined to give any consideration to such evidence in ascertaining the value of said property and refused to fix the value of said property at the present cost of reproduction.

Thirty-first.

Because the court erroneously found and held that the defendant company, under the operation of the act of March 3, 1897,
2190 complained of in the bills of complaint filed herein, would receive an annual net income of between five and six per cent. upon the present actual value of its property, when the testimony conclusively shows that the annual net income to said company under the operation of said act of March 3, 1897, if applied to the business of the Kansas City Stock Yards Company and the property used by it for stock-yards purposes, would be less than two per cent. upon the present actual value of said property.

Thirty-second.

Because in reaching the conclusion that the net income of the defendant company, under the operation of the act in question, would be between five and six per cent. upon the value of its property, the court erroneously included in such net income the whole income derived by the defendant company from sources not affected by the statute and not derived from the stock-yards business.

Thirty-third.

Because the court received and considered as testimony tending to show the present value of the property of the Kansas City Stock Yards Company used for stock-yards purposes the evidence of one C. D. Parker, produced as a witness by the defendant Louis C. Boyle, as attorney general of the State of Kansas, and subsequently based its decree on such and similar testimony, when the following evidence of the said Parker shows that he was not a proper expert witness as to the value of the property in controversy and was not competent to give any testimony in that regard :

"Q. You don't know anything about the value of the use of that land for stock-yards purposes?

A. No, sir.

Q. If another stock yards company should come in do you think it could procure as desirable a location in the bottoms?

A. I don't think it could.

Q. Now, state, if you can, what is the actual present value of the land for stock-yards purposes.

A. I don't know."

2191 All of the testimony of the said C. D. Parker as to the value of the property in controversy was received under the objections and subject to the exceptions of the complainants and each of them.

Thirty-fourth.

Because the court received and considered as testimony tending to show the present actual value of the property of the Kansas City Stock Yards Company used for stock-yards purposes the evidence of one E. S. Merrill, produced as a witness by the defendant Louis C. Boyle, as attorney general of the State of Kansas, and subsequently based its decree on such and similar testimony, when the following evidence of the said Merrill shows that he was not a proper expert witness as to the value of the property in controversy and was not competent to give any testimony in that regard:

"Q. What is the land worth in this tract, marked 'E,' concerning which you have testified, lying east of Water street, in its present condition, just as it stands today?

A. I don't know.

Q. Then, as I understand your testimony, you are not testifying about the value of the property as it stands today in its present condition?

A. Not improved property.

Q. You can answer that question by yes or no. You are not testifying of the value of 'E' as it stands today?

A. No.

Q. Now, then, in making up your value, with reference to the tract marked 'E,' you consider that as naked-acre property, without any improvements or without any business at all?

A. Yes, sir.

Q. That is the fact, is it?

A. Yes, sir."

All of the testimony of the said E. S. Merrill as to the value of the property in controversy was received under the objections and subject to the exceptions of the complainants and each of them.

Thirty-fifth.

Because the court received and considered as testimony tending to show the present actual value of the property of the Kan-

2192 sas City Stock Yards Company used for stock-yards purposes the evidence of one E. F. Allen, produced as a witness by the defendant Louis C. Boyle, as attorney general of the State of Kansas, and subsequently based its decree on such and similar testimony, when the following evidence of the said Allen shows that he was not a proper expert witness as to the value of the prop

erty in controversy and was not competent to give any testimony in that regard:

"Q. Do you know the present value of the use of this land by the stock yards company?

A. What they are worth to the stock yards company?

Q. Yes, sir.

A. No, sir.

Q. In making your estimates of value, you were not influenced by the value of the use to which the lands were put by the company?

A. No, sir.

Q. Not at all?

A. No, sir."

All of the testimony of the said E. F. Allen as to the value of the property in controversy was received under the objections and subject to the exceptions of the complainants and each of them.

Thirty-sixth.

Because the court received and considered as testimony tending to show the present actual value of the property of the Kansas City Stock Yards Company used for stock-yards purposes the evidence of one R. E. Cable, produced as a witness by the defendant Louis C. Boyle, as attorney general of the State of Kansas, and subsequently based its decree on such and similar testimony, when the following evidence of the said Cable shows that he was not a proper expert witness as to the value of the property in controversy and was not competent to give any testimony in that regard:

"Q. Have you sold any real estate in the vicinity of that tract?

A. No, sir.

Q. Have you bought any?

A. No, sir.

2193 Q. You have never had any transactions of buying or selling property around there?

A. No, sir.

Q. What, in your opinion, is that tract 'E' worth just as it is today?

A. For general purposes or for the purposes for which it is being used?

Q. For the purposes for which it is being used.

A. Certainly I could not answer that question.

Q. You don't know?

A. No, sir."

All of the testimony of the said R. E. Cable as to the value of the property in controversy was received under the objections and subject to the exceptions of the complainants and each of them.

Thirty-seventh.

Because the court received and considered as testimony tending to show the present actual value of the property of the Kansas City Stock Yards Company used for stock-yards purposes the evidence of

one C. W. Whitehead, produced as a witness by the defendant Louis C. Boyle, as attorney general of the State of Kansas, and subsequently based its decree on such and similar testimony, when the following evidence of the said Whitehead shows that he was not a proper expert witness as to the value of the property in controversy and was not competent to give any testimony in that regard:

"Q. What is this property marked 'A,' 'B,' 'C,' 'D,' and 'E' worth for stock-yards purposes?

A. I don't know.

Q. What is the value of this property for railroad purposes?

A. I don't know.

Q. What is the value of this property for packing-house purposes?

A. I don't know anything about the packing-house business.

Q. What would be the value of that property for packing-house purposes?

A. I have stated, I believe, that I don't know."

All of the testimony of the said C. W. Whitehead as to the value of the property in controversy was received under the objections and subject to the exceptions of the complainants and each of them.

Thirty-eighth.

2194 Because the court erred in giving any consideration whatever to any of the testimony produced by the defendant Louis C. Boyle, as attorney general of the State of Kansas, concerning the present actual value of the property of the Kansas City Stock Yards Company used and operated for stock-yards purposes in the States of Kansas and Missouri, including the structures thereon and personal property necessarily connected therewith, for that none of such testimony valued or considered the plant or property of the Kansas City Stock Yards Company as a unit or as a completed structure or as an entirety or as a going concern, but all of said testimony estimated and assessed the value of the lands thereof as naked land only, divested of all improvements, and then valued the improvements separate and apart from the land, and then valued the personal property separate and apart from the improvements or land; whereas the special master and also the court should have valued all the property of the Kansas City Stock Yards Company used for stock-yards purposes as a unit, taking into consideration the uses to which it is put and all the elements making up its aggregate value, and the value thereof ought not to have been confined to naked lands, improvements separate and apart therefrom, and personal property separate and apart from the improvements and lands, but the value of each part of said plant, if valued separately, should have included the proportionate part of the value resulting from the combination of the means by which the Kansas City Stock Yards Company's business was carried on, a value existing to an appreciable extent throughout the entire domain of its operation.

Thirty-ninth.

Because the court in the decree and in the opinion handed down in support thereof should have found and held that the act of March 3, 1897, relating to stock yards and complained of in the bills of complaint filed herein, was invalid and had no application to the business of the Kansas City Stock Yards Company carried on in the State of Kansas and in the State of Missouri, and therefore, notwithstanding such act, the court should have found and held that the business of the Kansas City Stock Yards Company was not subject to be regulated and controlled by said act, either in the State of Kansas or in the State of Missouri.

2195 Fortieth.

Because said act of March 3, 1897, relating to stock yards and complained of in the bills of complaint filed herein, is invalid as class legislation and as being directly contrary to the provisions of section 1 of the fourteenth amendment to the Constitution of the United States.

Forty-first.

Because the evidence showed that the stock yards owned and operated by the defendant company was the only stock yards within the State of Kansas to which the act of March 3, 1897, was intended to or could have any application.

Forty-second.

Because the court should have allowed the complainants one month after the filing of the report of the special master, on August 24, 1897, within which to prepare and file exceptions thereto instead of limiting the complainants to eighteen days within which to prepare and file said exceptions, as required by the order of the court entered herein on August 26, 1897, and duly excepted to at the time by the complainants.

Forty-third.

Because the court erred in entering an order in these causes bearing date of August 26, 1897, wherein the court specifically denied the application of these complainants made under equity rules 74 and 83 for one month in which to prepare and file exceptions to the report of the master filed on August 24, 1897; all of which was duly excepted to at the time by the complainants.

Forty-fourth.

Because the decree of the court and the written opinion of the court filed in support thereof are contrary to the weight of the evidence.

Forty-fifth.

Because the decree of the court and the opinion of the court filed in support thereof are contrary to all of the evidence.

Forty-sixth.

2196 Because the decree of the court and the opinion of the court filed in support thereof are contrary to law.

Forty-seventh.

Because the decree of the court should have been rendered in favor of the complainants and each of them upon the testimony submitted.

Wherefore the complainants pray that the said decree herein complained of be reversed, and that the said court may be directed to enter a decree in accordance with the prayer of the bills filed herein.

WAGGENER, HORTON & ORR,
D. R. HITE,
Solicitors for the Complainants.

Oct. 28th, 1897.

Endorsed: Nos. 7427 & 7453. Charles U. Cotting & Francis L. Higginson vs. Louis C. Boyle, &c. Assignment of error on appeal. Filed with and at the same time of the petition of appeal, this 5th day of November, 1897. Geo. F. Sharitt, clerk.

2197 In the Circuit Court of the United States for the District of Kansas, First Division.

CHARLES U. COTTING, Complainant, v. KANSAS CITY STOCK YARDS COMPANY, a Corporation; C. F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants.	No. 7427. In Equity.
FRANCIS LEE HIGGINSON, Complainant, v. KANSAS CITY STOCK YARDS COMPANY, a Corporation; C. F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants.	No. 7453. In Equity.

Know all men by these presents that the Kansas City Stock Yards Company, duly incorporated and existing under the laws of the State of Kansas, is held and firmly bound to the clerk of this court and his successors in office, for the benefit of whom it may concern, in the penal sum of two hundred thousand dollars, lawful money of the United States; for the payment of which, well and truly to

be made, it hereby binds itself, its assigns and successors, firmly by these presents.

Sealed with its corporate seal and dated the 28th day of October, A. D. 1897.

The condition of the above obligation is such that in the event the decree finally entered in the foregoing causes dismissing the bills is affirmed it will, on demand, pay to the parties or party entitled thereto all overcharges for yarding and feeding live stock at its stock yards in Kansas City, Kansas, and Kansas City, Missouri, which it may have exacted in violation of sections IV and V of the Kansas statute relative to stock yards, approved March 3rd, 1897, since a restraining order was first awarded herein, to wit, on the 13th day of March, 1897, and that it will in like manner pay such overcharges, if any, as it may continue to exact in violation
2198 of said statute during the pendency of said appeal, the said obligation aforesaid to become void if the statute in question shall be pronounced invalid by the Supreme Court of the United States.

[SEAL.] KANSAS CITY STOCK YARDS COMPANY,
By C. F. MORSE, *Vice-President & Gen. Manager.*

Attest: E. E. RICHARDSON, *Secretary.*

Approved and ordered to be filed and entered of record Nov. 2nd, 1897.

AMOS M. THAYER,
U. S. Circuit Judge, 8th Circuit.

Endorsed: Nos. 7427 & 7453. Charles U. Cotting & Francis L. Higginson *vs.* Louis C. Boyle. Bond of $200,000. Filed Nov. 6, 1897. Geo. F. Sharitt, clerk.

2199 In the Circuit Court of the United States for the District of Kansas, First Division.

CHARLES U. COTTING, Complainant,
vs.
KANSAS CITY STOCK YARDS COMPANY, a Corporation; C. F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants. } No. 7427. In Equity.

FRANCIS LEE HIGGINSON, Complainant,
vs.
KANSAS CITY STOCK YARDS COMPANY, a Corporation; C. F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants. } No. 7453. In Equity.

Know all men by these presents that we, Charles U. Cotting and Francis Lee Higginson, complainants, as principals, and L. E.

James and E. S. W. Drought, as sureties, are held and firmly bound unto Louis C. Boyle, as attorney general of the State of Kansas, in the full and just sum of fifteen hundred dollars ($1,500.00), to be paid to the said Louis C. Boyle, as attorney general of the State of Kansas, his administrators, executors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 2nd day of November, in the year of our Lord one thousand eight hundred and ninety-seven.

Whereas lately, at a session of the United States circuit
2200 court for the district of Kansas, in a suit depending in said court between Charles U. Cotting and Francis Lee Higginson, complainants, and The Kansas City Stock Yards Company, a corporation; C. F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as attorney general of the State of Kansas, defendants, a final decree was rendered against the said Charles U. Cotting and Francis Lee Higginson, complainants, and in favor of Louis C. Boyle, as attorney general of the State of Kansas, one of said defendants, and the said complainants having obtained an allowance of appeal and filed a copy thereof in the clerk's office of the said court to reverse the said decree in the aforesaid suit, and a citation directed to the said Louis C. Boyle, as attorney general of the State of Kansas, citing and admonishing him to be and appear at the Supreme Court of the United States, to be holden at Washington, D. C., within thirty days from and after the 4th day of November, A. D. 1897:

Now, the condition of the above obligation is such that if the said Charles U. Cotting and Francis Lee Higginson, complainants, shall prosecute said appeal to effect and answer all costs and damages if they fail to make their appeal good, then the above obligation to be void; else to remain in full force and virtue.

CHARLES U. COTTING,
By WAGGENER, HORTON & ORR,
His Solicitors. [SEAL.]
FRANCIS LEE HIGGINSON,
By WAGGENER, HORTON & ORR,
His Solicitors. [SEAL.]
L. E. JAMES. [SEAL.]
E. S. W. DROUGHT. [SEAL.]

2201 Sealed and delivered in the presence of—
JOHN H. CRANDALL.

Approved by—
AMOS M. THAYER,
U. S. Circuit Judge.

STATE OF MISSOURI, } ss:
Jackson County, }

L. E. James, being first duly sworn, says that he is a resident of said State and worth fifteen hundred dollars over and above all his exemptions, debts, and liabilities.

L. E. JAMES.

Subscribed in my presence and sworn to before me this 2nd day of November, A. D. 1897.

[SEAL.] JOHN H. CRANDALL,
Notary Public, Jackson County, Mo.

STATE OF MISSOURI, } ss:
Jackson County, }

E. S. W. Drought, being first duly sworn, says that he is a resident of said State and worth fifteen hundred dollars over and above all his exemptions, debts, and liabilities.

E. S. W. DROUGHT.

Subscribed in my presence and sworn to before me this 2nd day of November, A. D. 1897.

[SEAL.] JOHN CRANDALL,
Notary Public, Jackson County, Mo.

(Endorsed:) Nos. 7427 & 7453. Charles U. Cotting & Francis Lee Higginson *vs.* Louis C. Boyle, &c. Appeal bond. Filed Nov. 6th, 1897. Geo. F. Sharitt, clerk.

2202 In the Circuit Court of the United States for the District of Kansas, First Division.

CHARLES U. COTTING, Complainant,
vs.
KANSAS CITY STOCK YARDS COMPANY, a Corporation; Louis C. Boyle, as Attorney General of the State of Kansas, *et al.*, Defendants. } No. 7427.

FRANCIS LEE HIGGINSON, Complainant,
vs.
KANSAS CITY STOCK YARDS COMPANY, a Corporation; Louis C. Boyle, as Attorney General of the State of Kansas, *et al.*, Defendants. } No. 7453.

Causes consolidated.

Order Concerning Original Papers.

Believing it to be necessary and proper, in my opinion, that the following original papers filed in the above cause as Exhibits C, K, M, Z, A A, P P, Q Q, 2, & 23 shall be inspected and considered by the Supreme Court of the United States upon the appeal of said cause to that court in connection with the transcript of the proceedings

in this court, it is hereby ordered that the clerk of this court duly enclose said original papers marked as exhibits as aforesaid in this cause in a proper sealed package for safe keeping and transportation, and that the same be properly and safely transmitted at the expense of the complainants by the clerk of this court to the clerk of the Supreme Court, at Washington, D. C., for the inspection and consideration of said original papers by the Supreme
2203–2205 Court upon said appeal, and that after the said cause so appealed is heard and finally decided by said Supreme Court, it is hereby ordered and directed that said original papers shall be safely returned again to the files of this court, to be kept on file with the other papers in said cause.

Dated this 6th day of November, A. D. 1897.

AMOS M. THAYER,
Circuit Judge.

I agree that the above order shall be made.

L. C. BOYLE,
As Attorney General.

Nov. 5th, 1897.

(Endorsed:) Nos. 7427 & 7453. Order. Filed Nov. 6th, 1897. Geo. F. Sharitt, clerk.

2206 In the Circuit Court of the United States for the District of Kansas, First Division.

CHARLES U. COTTING, Complainant, *v.* KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants.	In Equity. No. 7427.
FRANCIS LEE HIGGINSON, Complainant, *v.* KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants.	In Equity. No. 7453.

Causes consolidated.

Order for Enlargement of Time to Docket the Above Case and File the Record Thereof with the Clerk of the Supreme Court.

For good cause shown, it is hereby ordered that the time in which the complainants shall docket the above case and file the record thereof with the clerk of the Supreme Court of the United States is

enlarged by me for seventy days from and after the return day fixed in said citation on appeal to the Supreme Court, and the said complainants are hereby permitted to docket the above case and file the record thereof with the clerk of the Supreme Court of the United States by or before the period of seventy days from and after the date of the return day of said citation.

Dated November 23rd, 1897.

AMOS M. THAYER,
United States Circuit Judge.

I hereby consent to the granting and signing of said order.

L. C. BOYLE,
Attorney General.

November 23rd, 1897.

2207 & 2208 Endorsed: Nos. 7427 & 7453. Charles U. Cotting & Francis Lee Higginson *vs.* L. C. Boyle, att'y gen'l, *et al.* Order to enlarge time to docket & file record in Supreme Court. Filed Nov. 26, 1897. Geo. F. Sharitt, clerk.

2209 "EXHIBIT A."

Supreme Court of the United States (October Term, 1899).

No. 43.

CHARLES U. COTTING
vs.
A. A. GODDARD, Attorney General of the State of Kansas; The Kansas City Stock Yard Company, *et al.* } No. 7427.

FRANCIS L. HIGGINSON
vs.
A. A. GODDARD, Attorney General of the State of Kansas; The Kansas City Stock Yards Company, *et al.* } No. 7453.

1.

Hon. A. A. Goddard, attorney general of the State of Kansas.

DEAR SIR: Upon the hearing of the appeal the complainants will rely upon the 1st, 2nd, 3rd, 4th, and 5th assignments of errors, being virtually all based upon the ground that said chapter 240 of March 3, 1897, is contrary to and violative of the 14th amendment to the Constitution of the United States, if it be applied to the Kansas City Stock Yards Company; therefore said assignments No. 1 to 5, inclusive, pertain to the same matter and are substantially one assignment.

2.

They will also rely upon the 6th, 7th, 8th, 9th, and 10th assignments of error, being upon the ground that said chapter 240
2210 *os* violative of section 8, article 1, of the Constitution of the United States and the acts of Congress therein referred to.

3.

They will also rely upon the 11th, 12th, 13th, 14th, and 15th assignments of error, which contest the right of said chapter 240 to have any force or effect in the State of Missouri upon any sales of hay or grain in that State and upon any business transacted in that State. All of these said assignments are based virtually upon the theory that the act cannot have any extraterritorial force.

4.

They will also rely upon the 16th, 17th, 18th assignments of error because the property has not been valued by a special master or the United States circuit court as a completed structure or as a unit in its operation and management or as a going concern, and because said property as a completed structure or unit was or is worth over $9,500,000.

5.

They will also rely upon the 19th, 20th, 21st assignments of error because the matters referred to are contrary to and against the undisputed testimony in the case.

6.

They will also rely upon the 22nd, 23rd, 24th, and 25th assignments of error because the stipulations of the parties, control, and said matters therein referred to are contrary to and against such stipulations.

7.

They will also rely upon the 26th, 27th, 28th, 29th, 30th,
2211 31st, and 32nd assignments of error because said matters therein found and referred to are contrary to all the testimony.

8.

They will also rely upon the 33rd, 34th, 35th, 36th, 37th, and 38th assignments of error because all of the testimony therein referred to was wholly incompetent, irrelevant, and immaterial and was not entitled to any weight or consideration whatever.

9.

They will also rely upon the 39th, 40th, and 41st assignments of error because said chapter 240, Session Laws of 1897, is class legislation violative of the 14th amendment to the Constitution of the United States, and said act ought to have no application to the Kansas City Stock Yards Company nor to any business transacted by said stock yards in Missouri.

10.

They will also rely upon the 44th, 45th, 46th, and 47th assignments of error because, for the reasons heretofore given, the decree rendered is contrary to all of the testimony and is contrary to law

and this court should reverse the case and render judgment for the complainants upon the testimony submitted or direct further reference to the special master for a truthful and fuller report.

B. P. WAGGENER &
ALBERT W. HORTON,
Solicitors for Complainants.

2212 In the Supreme Court of the United States.

CHARLES U. COTTING and FRANCIS LEE HIGGINSON, Appellants,
vs.
A. A. GODDARD, Attorney General of the State of Kansas; The Kansas City Stock Yards Co., *et al.*, Appellees.

Stipulation.

It is hereby stipulated that the following parts of the record only shall be printed, the same being all that is necessary to be printed from the record for the consideration of assignments of errors on which the appellants rely, a copy of which is hereto attached, marked "Exhibit A," and made a part of these stipulations.

B. P. WAGGENER &
ALBERT W. HORTON,
Counsel for Complainants.
A. A. GODARD,
Attorney General of the State of Kansas.
WALLACE PRATT,
G. P. DANA, &
WM. BLACK,
Counsel for Other Defendants.

2213 The following pages of the record in case No. 43 are to be printed:

Pp. 1–23, inclusive (bill of Cotting and restraining orders).
Pp. 42–81, inclusive (bill of Higginson).
Pp. 83–85, inclusive (restraining order).
Pp. 94–98, inclusive (amendment to Cotting bill).
Pp. 100–105, inclusive (amendment to Higginson bill).
— 108, 109, inclusive (order of consolidation).
Pp. 308–310, inclusive (first hearing for preliminary injunction and the appointment of George W. Clark to take testimony upon all issues).
Pp. 323–329, inclusive (order for final hearing of preliminary injunction and order for bond of $75,000, together with the bond).
— 330–356, inclusive (special report of the master, together with all exhibits thereto).
— 422 (Exhibit E E and statement of purchases of hay and grain for 1896).
— 423 (Exhibit S S and stipulation about expenditures for the first five months of 1897).

2214 Pp. 424–433, inclusive (Exhibits F F and stipulation about disbursements of earnings for the years 1892–1896, inclusive).

Pp. 435–571, inclusive (testimony of Harry P. Child).
Pp. 572–726 (testimony of Charles F. Morse, omitting seven lines on page 726 concerning certain affidavits; also omitting Exhibits B B and C C on pages 1752–1756, inclusive, and 1757–1777, inclusive).
Pp. 727–779, inclusive (testimony of Charles F. Morse as a witness for the attorney general).
Pp. 780–872, inclusive (testimony of Eugene Rust).
Pp. 905–925, inclusive (testimony of George T. Williams).
Pp. 926–945, inclusive (testimony of Donald McNeal Palmer).
Pp. 946–962, inclusive (testimony of William N. Babcock).
Pp. 963–980, inclusive (testimony of J. W. Ferguson).
Pp. 981–988, inclusive (testimony of J. W. Tourtellot).
Pp. 989–1006, inclusive (testimony of J. B. Welsh).
Pp. 1007–1017, inclusive (testimony of W. J. Dalton).
Pp. 1018–1022, inclusive (testimony of Charles K. Wells).
2215 Pp. 1023–1038, inclusive (testimony of D. S. Young).
Pp. 1040–1452, inclusive (testimony of A. A. Whipple).
Pp. 1053–1079, inclusive (testimony of Albert Marty).
Pp. 1080–1082, inclusive (testimony of M. E. Burnett).
Pp. 1083–1088, inclusive (testimony of Thomas J. Hinton).
Pp. 1089–1097, inclusive (testimony of C. W. Schiller).
Pp. 1098–1105, inclusive (testimony of W. W. Atkin).
Pp. 1124–1129, inclusive (testimony of Thomas J. Haire).
Pp. 1176–1183, inclusive (testimony of Albert Dean).
Pp. 1194–1221, inclusive (testimony of E. S. Merrill).
Pp. 1222–1255, inclusive (testimony of C. D. Parker).
Pp. 1256–1282, inclusive (testimony of E. F. Allen).
2216 Pp. 1286–1301 (testimony of R. E. Cable).
Pp. 1302–1322, inclusive (testimony of C. W. Whitehead).
Pp. 1323–1342, inclusive (testimony of William S. Beard).
Pp. 1343, 1344, inclusive, and eight lines at top of page 1345, being part of the testimony of Elliott E. Richardson; also
Pp. 1382–1391, inclusive, being part of the testimony of Elliott E. Richardson.
Pp. 1392–1414, inclusive (testimony of William J. Stagg).
P. 1436 (testimony of Charles F. Morse to the close of his evidence on page 1444).
Pp. 1445 (testimony of George T. Williams).
Pp. 1560–1562, inclusive (of the testimony offered touching assessed valuation of stock-yards property).
Pp. 1566–1568, inclusive (testimony of J. B. Spellman).
(Testimony of E. W. Fish, beginning on p. 1569 and ending on page 1572.)
(Testimony of B. F. Tyler, beginning on p. 1572–1573.)
Pp. 1574–1585, inclusive (testimony of W. S. Tough).
2217 Pp. 1586–1588, inclusive (testimony of C. S. Gould).
Pp. 1589 (testimony of E. Peck, beginning on said page and ending on p. 1593).
Pp. 1593½ (testimony of N. B. Greer).
P. 1594 (first ten lines of testimony of Edward Jaquins on said

page; also testimony of said witness commencing on page 1598 to and including that given on page 1611).

Pp. 1677–1684, inclusive (regulations concerning cattle transportation, promulgated by the United States Department of Agriculture, dated January 27, 1897).

P. 1699 (Exhibit No. 3, found on said page).

P. 1702 (Exhibit No. 6, found on said page).

P. 1703 (Exhibit No. 7, found on said page).

P. 1735 (Exhibit P, found on said page).

Pp. 1741, 1742, 1743, 1744 (extracts from the senate and house journal of the State of Kansas of 1897).

P. 1896 (Exhibit No. 5).

P. 1904 (Exhibit No. 4).

Pp. 1967–2009, inclusive (exceptions of complainants).

Pp. 2032–2049, inclusive (opinion of Judge Foster).

2218 Pp. 2050, 2051 (order).

P. 2052 (decree).

Pp. 2056, 2057 (stipulation).

Pp. 2058, 2058½ (order).

Pp. 2059–2101, inclusive (answer of Louis C. Boyle to Higginson bill).

Pp. 2102–2144, inclusive (answer of Louis C. Boyle to Cotting bill).

Pp. 2145, 2146, inclusive (replication of Charles U. Cotting).

Pp. 2147, 2148 (replication of Higginson).

P. 2153 (copy of proceedings of United States circuit court at Leavenworth, October 18, 1897, and continuation of same on page 2154).

Pp. 2157–2167, inclusive (opinion of Judge Thayer).

Pp. 2170–2172, inclusive (final decree).

Pp. 2179, 2180 (appeal).

Pp. 2181, 2196 (assignment of errors.)

2219 Pp. 2197. 2198, inclusive (bond of complainant made under order of court).

Pp. 2199–2201, inclusive (appeal bond).

Pp. 2202, 2203 (order concerning original papers).

Pp. 2206, 2207, inclusive (order for enlargement of time).

2220 [Endorsed:] File No., 16,789. Supreme Court U. S., October term, 1899. Term No., 43. Chas. U. Cotting *et al.*, appellants, *vs.* A. A. Godard, as att'y gen'l of State of Kans., *et al.* Assignment of errors & stipulation to omit parts of record in printing. Filed Aug. 8th, 1899.

Endorsed on cover: Case No. 16,789. Kansas C. C. U. S. Term No., 43. Charles U. Cotting and Francis Lee Higginson, appellants, *vs.* A. A. Godard, as attorney general of the State of Kansas, and The Kansas City Stock Yards Company. Filed February 4th, 1898.

EXTRACTS FROM RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 971.

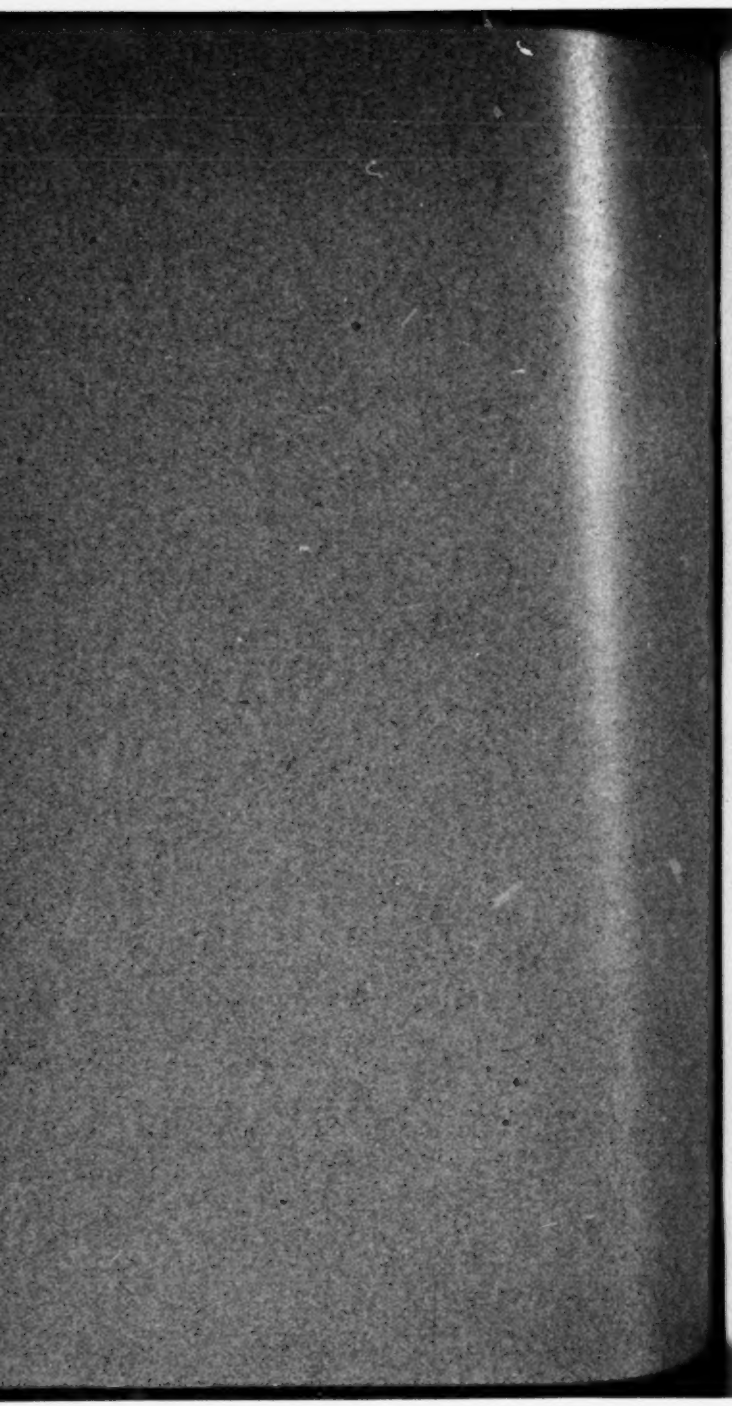
CHARLES U. COTTING ET AL., APPELLANTS,

vs.

A. A. GODARD, AS ATTORNEY GENERAL OF THE STATE OF KANSAS; KANSAS CITY STOCK YARDS CO., ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR DISTRICT OF KANSAS.

(16,789.)



(16,789.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 43.

CHARLES U. COTTING ET AL., APPELLANTS,

vs.

A. GODARD, AS ATTORNEY GENERAL OF THE STATE OF KANSAS; KANSAS CITY STOCK YARDS CO., ET AL.

PEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR DISTRICT OF KANSAS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 7, 1899.

(Record, p. 288.)

In the Circuit Court of the United States for the District of Kansas, First Division.

CHARLES U. COTTING, Complainant, *vs.* KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants.	}	No. 7427. In Equity.

Objections to Bill of Complaint.

On the call of this cause for hearing on the bill for a preliminary or temporary injunction the defendant Louis C. Boyle, as attorney general of the State of Kansas, objects to said bill and to any relief thereunder or evidence in support thereof on the several grounds following, to wit:

1. Said bill (except as to said new matter) does not state facts sufficient to constitute a cause of action in favor of the complainant and against this defendant.

2. The complainant has not by his said original bill made such a cause as entitled him in a court of equity to any relief from or against this defendant touching the matters contained in the said original bill or any of such matters.

3. In case the allegations in said original bill are true (which the defendant does not admit) said bill contains not any matter of equity whereon to sustain a writ of injunction as sought and prayed for in and by said original bill, and the complainant has not by his said original bill made such a case as to entitle him to any relief by injunction.

4. It appears by said bill that there are divers other persons who are necessary parties to said bill, but who are not made parties thereto, and in particular it appears that the State of Kansas is the only person or corporation having an interest in this controversy adverse to the complainant and the defendants Kansas City Stock Yards Company, a corporation; Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, all of said defendants being united in interest with the complainant, and this defendant has no personal interest whatever in said controversy other than such as pertains to every citizen of the State of Kansas, and said State of Kansas is not made a party to said bill.

5. It appears by the said bill that for all purposes of jurisdiction of this court the complainant is a citizen of the State of Kansas, and that there is no real and *bona fide* controversy between the complainant and The Kansas City Stock Yards Company, defendant, and its officers joined as defendants, and neither the sum nor the value

of $2,000, exclusive of interest and costs, nor any other sum or value is in dispute between them, and there is no real and *bona fide* controversy between the complainant and this defendant, and neither the sum nor the value of $2,000, exclusive of interest and costs, nor any other sum or value is in dispute between the complainant and this defendant.

6. The said bill is exhibited against this defendant and against several other defendants to the said bill for several and distinct and indefinite matters and causes which have no relation to each other, and in which this defendant is in no way interested or concerned and ought not to be implicated.

7. No paragraph of the fifteen original paragraphs of said bill states facts sufficient to constitute a cause of action in favor of complainant and against this defendant, and the complainant has not by any paragraph of the fifteen contained in said original bill made such a case as entitled him in a court of equity to any relief from or against this defendant touching the matters contained therein or any of such matters.

8. And as to said new matter inserted as amendatory by leave of court as paragraph 8½, the same does not entitle the complainant in a court of equity to any relief from or against this defendant touching the matters therein contained or any of said matters, because if said matters are true the complainant may have plain, adequate, and complete relief at law in the ordinary course thereof, and if said matters are true this defendant is improperly made a party to this suit and ought to be dismissed therefrom, and this action ought to be dismissed for want of jurisdiction and for want of equity.

9. And as to said new matter inserted as amendatory by leave of court as paragraph 8½, the same does not present any Federal question or any question under the Constitution, laws, or treaties of the United States, and the complainant being conclusively presumed for all purposes of jurisdiction a citizen of this State, this court has no jurisdiction as to said new matter inserted as paragraph 8½.

10. And as to said original bill as now amended by the insertion of new matter by leave of court as paragraph 8½, the same does not entitle the complainant to any relief in a court of equity from or against this defendant touching the matters contained in the said original bill as now amended or any of such matters.

11. And as to said new matter inserted as paragraph 8½, as an amendment to said original bill, the same is entirely inconsistent with and contradictory of the matters stated in said original bill, and if such new matter be insisted upon this cause ought to be dismissed for want of jurisdiction, and this defendant so prays.

12. No temporary injunction ought to be granted, for the further reason that neither the State of Kansas nor the public can be protected by any bond running to this defendant, and such bond cannot properly run to the State of Kansas, because the State is not a party to this action, and there is no authority for a bond running to the State of Kansas.

Wherefore this defendant prays that the temporary restraining order heretofore granted in this case be vacated and set aside, and

that the application of the complainant for a temporary or preliminary injunction be refused and denied, and that the complainant's bill be dismissed.

L. C. BOYLE,
As Attorney General of the State of Kansas, Defendant.

(Endorsed:) No. 7427. Objections to bill of complaint. Filed April 3, 1897. Geo. F. Sharitt, clerk.

(Record, p. 292.)

In the Circuit Court of the United States for the District of Kansas, First Division.

FRANCIS LEE HIGGINSON, Complainant, *vs.* KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants.	No. 7453. In Equity.

Objections to Bill of Complaint.

On the call of this cause for hearing on the bill for a preliminary or temporary injunction the defendant, Louis C. Boyle, as attorney general of the State of Kansas, objects to said bill and to any relief thereunder or evidence in support thereof on the several grounds following, to wit:

1. Said bill (except as to said new matter) does not state facts sufficient to constitute a cause of action in f[illegible]f the complainant and against this defendant.

2. The complainant has not by his said original bill made such a case as entitled him in a court of equity to any relief from or against this defendant touching the matters contained in the said original bill or any of such matters.

3. In case the allegations in said original bill are true (which the defendant does not admit) said bill contains not any matter of equity whereon to sustain a writ of injunction, as sought and prayed for in and by said original bill, and the complainant has not by his said original bill made such a case as to entitle him to any relief by injunction.

4. It appears by said bill that there are divers other persons who are necessary parties to said bill, but who are not made parties thereto, and in particular it appears that the State of Kansas is the only person or corporation having an interest in this controversy adverse to the complainant and the defendants Kansas City Stock Yards Company, a corporation; Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, all of said defendants being united in interest with the complainant, and this defendant

has no personal interest whatever in said controversy other than such as pertains to every citizen of the State of Kansas, and said State of Kansas is not made a party to said bill.

5. It appears by the said bill that for all purposes of jurisdiction of this court the complainant is a citizen of the State of Kansas, and that there is no real and *bona fide* controversy between the complainant and The Kansas City Stock Yards Company, defendant, and its officers joined as defendants, and neither the sum nor the value of $2,000, exclusive of interest and costs, nor any other sum or value is in dispute between them, and there is no real and *bona fide* controversy between the complainant and this defendant, and neither the sum nor the value of $2,000, exclusive of interest and costs, nor any other sum or value is in dispute between the complainant and this defendant.

6. The said bill is exhibited against this defendant and against several other defendants to the said bill for several and distinct and indefinite matters and causes which have no relation to each other, and in which this defendant is in no way interested or concerned and ought not to be implicated.

7. No paragraph of the fifteen original paragraphs of said bill states facts sufficient to constitute a cause of action in favor of complainant and against this defendant, and the complainant has not by any paragraph of the fifteen contained in said original bill made such a case as entitled him in a court of equity to any relief from or against this defendant touching the matters contained therein or any of such matters.

8. And as to said new matter inserted as amendatory by leave of court as paragraph 8½, the same does not entitle the complainant in a court of equity to any relief from or against this defendant touching the matters therein contained or any of said matters, because if said matters are true the complainant may have plain, adequate, and complete relief at law in the ordinary course thereof, and if said matters are true this defendant is improperly made a party to this suit and ought to be dismissed therefrom, and this action ought to be dismissed for want of jurisdiction and for want of equity.

9. And as to said new matter inserted as amendatory by leave of court as paragraph 8½, the same does not present any Federal question or any question under the Constitution, laws, or treaties of the United States, and the complainant being conclusively presumed for all purposes of jurisdiction a citizen of this State, this court has no jurisdiction as to said new matter inserted as paragraph 8½.

10. And as to said original bill as now amended by the insertion of new matter by leave of court as paragraph 8½, the same does not entitle the complainant to any relief in a court of equity from or against this defendant touching the matters contained in the said original bill as now amended or any of such matters.

11. And as to said new matter inserted as paragraph 8½ as an amendment to said original bill, the same is entirely inconsistent with and contradictory of the matters stated in said original

bill, and if such new matter be insisted upon this cause ought to be dismissed for want of jurisdiction, and this defendant so prays.

12. No temporary injunction ought to be granted, for the further reason that neither the State of Kansas nor the public can be protected by any bond running to this defendant, and such bond cannot properly run to the State of Kansas, because the State is not a party to this action and there is no authority for a bond running to the State of Kansas.

Wherefore this defendant prays that the temporary restraining order heretofore granted in this case be vacated and set aside, and that the application of the complainant for a temporary or preliminary injunction be refused and denied, and that the complainant's bill be dismissed.

L. C. BOYLE,
As Attorney General of the State of Kansas, Defendant.

(Endorsed:) No. 7453. Objections to bill of complaint. Filed April 3, 1897. Geo. F. Sharitt, clerk.

(Record, p. 298.)

In the Circuit Court of the United States for the District of Kansas.

CHARLES U. COTTING
vs.
KANSAS CITY STOCK YARDS COMPANY ET AL.

Now comes the defendant L. C. Boyle, att'y gen. of Kansas, and enters his appearance in the suit and to the complainant's bill of complaint herein.

To the clerk of said court:

Enter the above in the order book in equity of said court.

L. C. BOYLE,
Att'y Gen., Sol'r for Defendant.

(Endorsed:) No. 7427. Appearance of L. C. Boyle, att'y general. Filed April 5, 1897. Geo. F. Sharitt, clerk.

(Record, p. 299.)

In the Circuit Court of the United States for the District of Kansas.

FRANCIS LEE HIGGINSON
vs.
KANSAS CITY STOCK YARDS COMPANY ET AL.

Now comes the defendant L. C. Boyle, att'y gen. of Kansas, and enters his appearance in the suit and to the complainant's bill of complaint herein.

To the clerk of said court:

Enter the above in the order book in equity of said court.

L. C. BOYLE,
Att'y Gen., Sol'r for Defendant.

(Endorsed:) No. 7453. Appearance of L. C. Boyle, att'y general. Filed April 5, 1897. Geo. F. Sharitt, clerk.

(Record, p. 316.)

In the Circuit Court of the United States for the District of Kansas, First Division.

CHAS. U. COTTING, Complainant, *vs.* THE KANSAS CITY STOCK YARDS COMPANY, a Corporation; Chas. F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General for the State of Kansas, Defendants.	No. 7427. In Equity.

The demurrer of the above-named defendant, Louis C. Boyle, as attorney general, to the bill of complaint of the above-named Chas. U. Cotting, complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matter or things in the said bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, doth demur to said bill, and for cause of demurrer showeth:

First. That the said complainant hath not by his said bill made such a case as entitles him in a court of equity to any relief from or against this defendant touching the matters contained in the said bill or any of such matters.

Second. That in case the allegations in the said bill of complaint were true as therein set forth, which he does not admit, the said bill contains not any matter of equity whereon to sustain such writ of injunction as is sought and prayed for in and by said bill, nor hath he by the said bill made such a case as to entitle him to any relief by injunction.

Third. That it appears by the said bill that there — divers other persons who are necessary parties to the said bill, but who are not made parties thereto, and in particular it appears that the State of Kansas is the only person or corporation having an interest in this controversy adverse to the complainant and the defendants Kansas City Stock Yards Company, a corporation; Chas. F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, all of said defendants being united in interest with the complainant, and this defendant has no personal interest whatever in said controversy other than such as pertains to every citizen of the State of Kansas, and said State of Kansas is not made a party to said bill.

Fourth. That it appears by the said bill that for all purposes of jurisdiction of this court the complainant is a citizen of the State of Kansas, and that there is no real *bona fide* controversy between the complainant and The Kansas City Stock Yards Company, defendant, and its officers joined as defendants, and neither the sum nor the value of $2,000, exclusive of interest and costs, nor any other sum or value is in dispute between them, and there is no real and *bona fide* controversy between the complainant and this defendant, and neither the sum nor the value of $2,000, exclusive of interest and costs, nor any other sum or value is in dispute between the complainant and this defendant.

Fifth. That the said bill is exhibited against this defendant and against several other defendants to the said bill for several and distinct and independent matters and causes which have no relation to each other and in which this defendant is in no way interested or concerned and ought not to be implicated.

Wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint, this defendant doth demur thereto and to all other matters and things therein contained, and humbly prays the judgment of this honorable court whether he shall be compelled to make any further answer to said bill; and he prays to be hence dismissed with his reasonable cost in this behalf sustained.

I do hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

L. C. BOYLE,
Attorney General, Defendant.

STATE OF KANSAS,
District of Kansas, First Division, } *ss:*
County of Shawnee,

Louis C. Boyle, being duly sworn, does depose and say that he has read the foregoing demurrer to the bill of complaint in this suit, and the same is not interposed for the purpose of delaying said suit or any proceeding therein.

L. C. BOYLE.

Subscribed and sworn to by the said Louis C. Boyle this 21st day of June, A. D. 1897.

C. M. ROSS,
[SEAL.] *Ass't Sec'y of State.*

(Endorsed:) No. 7427. Chas. U. Cotting, complainant, *vs.* The Kansas City Stock Yards Company *et al.*, defendants. Demurrer. Filed June 21st, 1897. Geo. F. Sharitt, clerk.

(Record, p. 319.)

In the Circuit Court of the United States for the District of Kansas, First Division.

F. L. HIGGINSON, Complainant,
vs.
THE KANSAS CITY STOCK YARDS COMPANY, a Corporation; Chas. F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General for the State of Kansas, Defendants. } No. 7427. In Equity.

The demurrer of the above-named defendant, Louis C. Boyle, as attorney general, to the bill of complaint of the above-named F. L. Higginson, complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matter or things in the said bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, doth demur to said bill and for cause of demurrer showeth:

First. That the said complainant hath not by his said bill made such a case as entitles him in a court of equity to any relief from or against this defendant touching the matters contained in the said bill or any of such matters.

Second. That in case the allegations in the said bill of complaint were true as therein set forth, which he does not admit, the said bill contains not any matter of equity whereon to sustain such writ of injunction as is sought and prayed for in and by said bill, nor hath he by the said bill made such a case as to entitle him to any relief by injunction.

Third. That it appears by the said bill that there — divers other persons who are necessary parties to the said bill, but who are not made parties thereto, and in particular it appears that the State of Kansas is the only person or corporation having an interest in this controversy adverse to the complainant and the defendants, Kansas City Stock Yards Company, a corporation; Chas. F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, all of said defendants being united in interest with the complainant, and this defendant has no personal interest whatever in said controversy other than such as pertains to every citizen of the State of Kansas, and said State of Kansas is not made a party to said bill.

Fourth. That it appears by the said bill that, for all purposes of jurisdiction of this court, the complainant is a citizen of the State of Kansas, and that there is no real *bona fide* controversy between the complainant and The Kansas City Stock Yards Company, defendant, and its officers, joined as defendants, and neither the sum nor the value of $2,000, exclusive of interest and costs, nor any other sum or value is in dispute between them, and there is no real and *bona fide* controversy between the complainant and this

defendant, and neither the sum nor the value of $2,000, exclusive of interest and costs, nor any other sum or value, is in dispute between the complainant and this defendant.

Fifth. That the said bill is exhibited against this defendant and against several other defendants to the said bill for several and distinct and independent matters and causes which have no relation to each other and in which this defendant is in no way interested or concerned and ought not to be implicated.

Wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint, this defendant doth demur thereto and to all other matters and things therein contained and humbly prays the judgment of this honorable court whether he shall be compelled to make any further answer to said bill, and he prays to be hence dismissed with his reasonable cost in this behalf sustained.

I do hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

L. C. BOYLE,
Attorney General, Defendant.

STATE OF KANSAS,
District of Kansas, First Division, County of Shawnee, } ss:

Louis C. Boyle, being duly sworn, does depose and say that he has read the foregoing demurrer to the bill of complaint in this suit, and the same is not interposed for the purpose of delaying said suit or any proceeding therein.

L. C. BOYLE.

Subscribed and sworn to by the said Louis C. Boyle this 21st day of June, A. D. 1897.

C. M. ROSS,
[SEAL.] *Ass't Sec'y of State.*

(Endorsed:) No. 7453. F. L. Higginson, complainant, *vs.* The Kansas City Stock Yards Company *et al.*, defendants. Demurrer. Filed June 21st, 1897. Geo. F. Sharitt, clerk.

(Record, p. 2168.)

In the Circuit Court of the United States for the District of Kansas, First Division.

CHARLES U. COTTING, Complainant, *vs.* KANSAS CITY STOCK YARDS COMPANY, a Corporation; C. F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants.	No. 7427. In Equity.
FRANCIS LEE HIGGINSON, Complainant, *vs.* KANSAS CITY STOCK YARDS COMPANY, a Corporation; C. F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants.	No. 7453. In Equity.

Decree Pro Confesso.

The above causes having been brought on for hearing, and it appearing that the defendants The Kansas City Stock Yards Company, C. F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson were duly served with process in the foregoing suits more than twenty days before rules day of April, 1897, and the said defendants and each of them thereafter having failed to plead, answer, or demur to the bills of complaint filed herein and each of them, and as an order for a decree *pro confesso* was duly entered in this court against them and each of them more than thirty days prior to October 28th, 1897, thereupon the court orders, adjudges, and decrees that the said bills of complaint in the foregoing suits and each of them be taken *pro confesso* against the said defendants, The Kansas City Stock Yards Company, C. F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, with costs to the complainants, to be taxed against said defendants last named and each of them.

October 28th, 1897.

AMOS M. THAYER,
U. S. Circuit Judge.

(Endorsed:) Nos. 7427 & 7453. Cotting *vs.* K. C. S. Y. Co. and Higginson *vs.* K. C. S. Y. Co. Decree *pro confesso*. Filed Oct. 28th, 1897. Geo. F. Sharitt, clerk.

File No., 16,789.

Supreme Court of the United States, No. 237, October Term, 1898.

CHARLES U. COTTING, Appellant, *v.* KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants.	No. 237, October Term, 1898.
FRANCIS LEE HIGGINSON, Appellant, *v.* KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and Louis C. Boyle, as Attorney General of the State of Kansas, Defendants.	

(Causes 7427 and 7453, U. S. C. C., dist. of Kansas, first division, consolidated.)

Entry of Appearance.

Having received notice in due time of the appeal in the above causes (consolidated) pending in this court, I hereby enter my appearance in said appeal in the above court.

WALLACE PRATT,

Counsel of the Kansas City Stock Yards Company, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E. Richardson, Defendants Below.

Endorsed: File No., 16,789. Supreme Court U. S., October term, 1898. Term No., 237. Appearance for certain appellees. Filed Dec. 17th, 1898.

File No., 16,789.

Supreme Court of the United States, No. 237, October Term, 1898.

In the Supreme Court of the United States.

CHARLES U. COTTING, Appellant, *v.* THE KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and A. A. Godard, as Attorney General of the State of Kansas, Appellees.	In Equity.
	No. 237, October Term, 1898.
FRANCIS LEE HIGGINSON, Appellant, *v.* THE KANSAS CITY STOCK YARDS COMPANY, a Corporation; Charles F. Morse, Harry P. Child, Eugene Rust, Elliott E. Richardson, and A. A. Godard, as Attorney General of the State of Kansas, Appellees.	In Equity.

Entry of Appearance.

Having been substituted as one of the appellees in the place of Louis C. Boyle, I hereby enter my appearance in the above cause and appeal.

A. A. GODARD,
As Attorney General of the State of Kansas.

D. M. VALENTINE, *Of Counsel.*

Endorsed: File No., 16,789. Supreme Court U. S., October term, 1898. Term No., 237. Appearance for appellee. Filed Feb. 4th, 1899.

DEC 2 1898
JAMES H. McKENNEY,
Clerk.

EXTRACTS FROM TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. ~~225~~ 434 1.

No. 7427. CHARLES U. COTTING
vs.
LOUIS C. BOYLE, &c.

No. 7453. FRANCIS L. HIGGINSON
vs.
LOUIS C. BOYLE, &c.

CASES CONSOLIDATED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, DISTRICT OF KANSAS, FIRST DIVISION.

RECORD FILED FEBRUARY 4, 1898.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 237.

No. 7427. CHARLES U. COTTING *vs.* LOUIS C. BOYLE, &c.

No. 7453. FRANCIS L. HIGGINSON *vs.* LOUIS C. BOYLE, &c.

Cases consolidated.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, DISTRICT OF KANSAS, FIRST DIVISION.

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I.

That your orator, Charles U. Cotting, is a resident and citizen of the state of Massachusetts, and is a stockholder in the Kansas City Stock Yards Company, being the owner, and in the possession of 250 shares of the capital stock of said corporation, which said shares of stock so held, owned and possessed by him, are of the full value of more than five thousand ($5,000) dollars, to wit, of the value of thirty thousand ($30,000) dollars; that your orator invested in, and became the owner of said stock in the said corporation for a valuable consideration to earn and obtain thereon a reasonable and a fair dividend or rate of interest on the actual value thereof; that since your orator became the owner and holder of said stock, up to this time, the said corporation has been so economically and successfully operated and managed, as to produce some profit to your orator, and to the other stockholders of said corporation, who have invested their money in said corporation and in the stock thereof; that your orator is entitled to demand and require that the said corporation shall continue to carry on its business in the future, as in the past, so that the said corporation, if possible shall earn a reasonable and fair dividend or interest on the present actual value of its property, so that your orator as a stockholder therein, shall receive some compensation for the use of his money and property invested in said corporation, and in the stock thereof, without prejudice to the rights of others, and for this purpose, and to this end your orator is entitled to demand of the said Kansas City Stock Yards Company, and the officers and agents thereof, that the said company shall prescribe, exact and collect such just and reasonable rates, charges and compensation from persons doing business with it, or making purchases of hay, corn or other property therefrom, as that the said corporation shall earn a fair and reasonable compensation or interest on the present actual value of its property, if it be possible so to do, in the lawful transaction of its business. That the amount involved in this suit and the matter in dispute exceeds, exclusive of interest and costs, the sum and value of two thousand dollars and the damages and losses which will accrue to your complainant if the so-called act hereinafter referred to shall be enforced in any respect will largely exceed, exclusive of interest and costs, the sum and value of two thousand dollars.

II.

That the Kansas City Stock Yards Company, defendant, is and for more than twenty years last past has been, a corporation duly created, organized and existing under the laws of the state of Kansas, and a citizen and resident thereof, and of the first division of said district, with power to construct, maintain and operate stock yards in this state and in the state of Missouri, and to own real estate for that purpose,

with authority also to erect and maintain buildings, hotels, railways, switches, yards, pens, and such other improvements as may be necessary for its purposes, and also with authority for receiving, shipping, yarding, feeding and otherwise caring for horses, mules, cattle and other stock at its yards in Kansas City, Kansas, and in Kansas City, Missouri, with the right of demanding, exacting, and collecting for its services performed, and for its property sold to others, fair compensation, and also such prices therefor as might be agreed upon by the parties interested; that the yards occupied by it in carrying on its business consist of about one hundred and sixty acres, about one hundred and twenty acres of which are situated in this state, and about forty acres thereof in the state of Missouri; that about sixty-five per cent. of the earnings of said corporation are derived from its business carried on in this state, and that about thirty-five per cent. thereof is derived from its business carried on in the state of Missouri; that, for a very large part of this real estate, the said corporation was compelled to pay large prices therefor, because it was absolutely necessary for its use to successfully carry on its business, and because the same was at the time of purchase occupied by a good class of buildings, which it was necessary to remove, and the land so formerly occupied by such buildings is now being used entirely for stock yards purposes; that the improvements at the stock yards consisting of buildings, railroad tracks, switches, viaducts, pens and other improvements are very extensive and maintained in a superior condition, the cattle pens alone covering about eighty acres, all of them either floored with plank, or paved with vitrified brick; that the corporation has hog sheds with a daily capacity of thirty thousand hogs, and sheep sheds with a daily capacity of twenty thousand sheep, and also stables for about four thousand horses and mules; that during the past five years the capacity of the yards of the corporation has been, to meet the growing demands of business, almost doubled, at a large expenditure of money; that the authorized capital stock of said corporation is seven million, five hundred thousand ($7,500,000) dollars, of which $7,368,650.00 on December 31, 1896, has been issued and all of which is paid up; that the present actual value of the property of said corporation, so employed for its stock yards, as aforesaid, is in excess of the value of seven million five hundred thousand ($7,500,000) dollars; that for the year 1896, the total receipts of stock at said stock yards were as follows, to wit:

1,714,532 cattle,
100,166 calves,
993,126 sheep,
2,605,575 hogs,
57,847 horses and mules,

making a total of all stock handled by said yards 5,471,446; that the gross earnings of the corporation for the year 1896 were one million, twenty-three thousand, eight hundred and seventy and $\frac{20}{100}$ dollars ($1,023,870.20); that the total expenditures were five hundred and forty-nine thousand, three hundred and fifty-one and $\frac{80}{100}$ ($549,351.80) dollars, all of which were necessary for the operation and maintenance of the property, leaving net earnings of four hundred and seventy-four thousand five hundred and eighteen and $\frac{40}{100}$ ($474,518.40) dollars, about six per centum on the capital stock of the corporation for that year; that the yards, pens, and most of the improvements of said stock yards have to be necessarily replaced or renewed about every five to seven years, costing large sums of money therefor, and consuming a large amount of the yearly earnings of the said corporation; that the charges now prescribed, exacted and collected by the corporation, and which have existed for several years, are as follows, to wit:

For driving, yarding, watering and weighing cattle, twenty-five cents per head; calves, ten cents per head, hogs, eight cents per head, and sheep, five cents per head; that such charges and prices are fair, reasonable and just, considering all conditions and the services rendered therefor, and only furnish reasonable compensation to the said defendant corporation; that all existing charges and prices of the corporation for hay, corn, and other grain sold or delivered by it, under the conditions and circumstances in which the same are sold and delivered and fed, and the care and attention given by the corporation to cattle and other stock in its yards, in connection with the sale, delivery and feeding of hay, corn and other grain, are fair, just and reasonable, and the operation of the stock yards under such rates, charges and prices, and the collection thereof, only permit the corporation to earn a fair and reasonable compensation or interest on the present actual value of its property, so necessarily occupied and used by it for stock yards business, and such earnings are about six per centum on the money invested in said corporation, after paying the operating expenses thereof, taxes, and the expenses of the necessary repairs, renewals and the maintenance of the same; that the charges for yardage and fees at the stock yards of the said corporation are the same as those of other stock yards similarly conducted, and the same as the stock yards at St. Louis, Missouri, East St. Louis and Chicago, Illinois, and Omaha, Nebraska; that said defendant corporation makes no charges whatever on any stock that is not sold in the yards when received from railroad companies, and said stock is subject to the order of the owner, and is delivered to the railroads or buyers without charge to the owner; that said stock yards so owned and operated by said corporation have been and are of great

pecuniary value and benefit to the stock raisers and shippers of Kansas, Missouri and adjacent states; that the location and operation of the stock yards of said corporation in this state and in Kansas City, Missouri, have induced large packing establishments to locate in Kansas City, Kansas, for the purpose of buying, killing and packing cattle and other stock, thereby furnishing an excellent and convenient market to the stock raisers and shippers of Kansas, Missouri and adjacent states; that fat cattle sold in Kansas City in 1896, netted an average of nine and three-fourths cents per hundred pounds more than the same stock sold in Chicago the same day, and that hogs netted nine cents more, and sheep seventeen cents more, and that the importance of the stock market at Kansas City to the producers, stock raisers, and shippers of Kansas, has been greatly increased by the successful operation of the large and extensive stock yards of said corporation at and near Kansas City, Kansas, and at and near Kansas City, Missouri.

III.

That Charles F. Morse, defendant, is a director, vice-president and general manager of the Kansas City Stock Yards Company, and the only managing director thereof, and, at the present time, in consequence of the absence of the president of said corporation in Europe, is also the acting president thereof, and has full authority to fix the rates and prices to be charged by said stock yards company and is a resident and citizen of the state of Missouri; that Harry P. Child is the assistant general manager of said corporation and a citizen and resident of the state of Missouri; that Eugene Rust, defendant, is the general superintendent of said corporation, and a resident and citizen of the state of Missouri; that Elliott E. Richardson, is the secretary of said corporation and a resident and citizen of the state of Kansas, and of the first division of said district; and that Louis C. Boyle, as attorney general of the state of Kansas, is a citizen and resident of the state of Kansas, and an inhabitant of the first division of said district, and the duly elected, qualified and acting attorney general of said state.

IV.

That on the third day of March, 1897, Honorable John W. Leedy, as governor of the state of Kansas, approved a certain so-called act of the legislature of said state, known as "Committee Substitute for House Bill No. 87" and entitled, "an act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating the charges thereof, and removing restrictions in the trade of dead animals, and prescribing penalties for the violations of this act;" that in the said so-called act, it was

provided the same should take effect and be in force from and after its publication in the official state paper of the state of Kansas; that a certified copy of the said so-called act is hereto attached, marked exhibit "A" and made a part of this bill of complaint, to which reference is hereby made as if fully incorporated herein; that the said so-called act was published in the official state paper of the state on the 12th day of March A. D. 1897; that the said so-called act is now, by the said defendant, Louis C. Boyle, as attorney general of the state of Kansas, alleged to be in full force, virtue and effect as a valid law of the state of Kansas, the said so-called act providing among other things, that "it shall be the duty of the attorney general to prosecute all violations of the provisions thereof."

V.

That the said so-called act, approved March 3, 1897, and heretofore referred to as exhibit "A" is unconstitutional and void in this, to wit: that under the provisions of the constitution of the United States, and particularly under the third clause of section 8, article 1 and of article 8, and of the fifth and fourteenth amendments thereof, neither the legislature of the state of Kansas, nor the state of Kansas has power to enact or enforce the so-called act, or any of the provisions thereof so as to include or apply to the Kansas City Stock Yards Company, nor any legislative power or other authority to define the duties of the said corporation in carrying on and operating its business, or any legislative power or other authority to regulate the charges of said corporation for services rendered by it to stock shippers or other persons, or any legislative power or other authority to abridge in any manner its rights, privileges and immunities, as it is attempted to do by the so-called act, or any legislative power or other authority to prescribe any penalties whatever for the violations of the said so-called act, or of any of its provisions.

VI.

That the said so-called act, approved March 3, 1897, is unconstitutional and void as contrary to, and in conflict with, the constitution of the United States, and especially as contrary to, and in conflict with, the provisions of the fourteenth amendment thereof, in this to wit: That it denies to the Kansas City Stock Yards Company, within the jurisdiction of the state of Kansas, the equal protection of the laws in that, by its provisions, it is made to apply only to such stock yards within the state "into which live stock is received for the purpose of exposing or having the same exposed for sale, or feeding, and doing business for a compensation, and which, for the preceding twelve months shall have had an average daily receipt of not less than one

hundred head of cattle, or three hundred head of hogs or three hundred head of sheep," in that, by such provision, it singles the Kansas City Stock Yards Company out of all the other citizens and corporations within the state of Kansas, without giving to such corporation any specific or corresponding benefit therefor and restricts the application of the said so-called act to the Kansas City Stock Yards Company alone, there being no other stock yards operated in the state of Kansas, except the defendant corporation which for the preceding twelve months has "an average daily receipt of not less than one hundred head of cattle or three hundred head of hogs or three hundred head of sheep;" That, while the said so-called act in controversy does not specifically name the Kansas City Stock Yards Company, it so described it that there can be no possible doubt with regard to the attempted exclusive application of the said so-called act to said defendant corporation, and this is substantially the same as naming the said corporation in the said so-called act; that the said so-called act not only attempts to fix the charges of said corporation for driving, yarding, watering and weighing stock, but also attempts to fix the prices at which it may sell and deliver hay, corn and other grain, and therefore said corporation is not treated as other owners and operators of stock yards within the state are treated which for the preceding twelve months have a less "average daily capacity than one hundred head of cattle, or three hundred head of hogs or three hundred head of sheep;" nor is it treated as other corporations or persons are treated who are engaged in selling and trading in personal property, nor is it treated equally with such other corporations or persons; that the said so-called act is strictly class legislation, arbitrarily made and enacted to discriminate against the defendant corporation, and your orator and other stockholders of said corporation, and prevents such corporation from being treated as other stock yards corporations are treated, and as other corporations and persons are treated, engaged in similar business in the state, under like conditions and circumstances.

VII.

That the said so-called act approved March 3, 1897, is unconstitutional and void as contrary to and in conflict with the provisions of the constitution of the United States, and especially as contrary to and in conflict with the provisions of the fifth and fourteenth amendments thereof, in this, to wit: That thereby the state of Kansas is attempting to deprive the Kansas City Stock Yards Company, and your orator as a stockholder therein, of liberty and property without due process of law and without just compensation therefor; that said defendant corporation is entitled, if it can do so in the operation of

its business, to earn a fair and reasonable compensation or interest yearly on the present actual value of its property, which said present actual value thereof exceeds the sum of seven million, five hundred thousand dollars, and if the said so-called act is, or shall be applied to all the business of said corporation, and its provisions thereof shall be enforced against said defendant, its officers, agents and servants, then the legislature of the state of Kansas, and said state, have unlawfully assumed the right, and illegally attempted to exercise the right, to reduce the rates and charges of said corporation for the driving yarding, watering and weighing of cattle in this state, and also abridging, restricting and limiting said corporation in the prices at which it may sell and deliver hay, corn and other grain, so as to diminish and reduce its charges, rates, revenues and earnings in such a manner and to such an extent as to prevent it, and your orator, and the other stockholders therein, from earning, receiving or obtaining a reasonable per cent. for the money invested in said corporation, and preventing said corporation, and your orator, and the other stockholders therein, from earning, receiving or obtaining a reasonable or fair compensation, interest or dividend upon the present actual value of the property of said corporation; that the enforcement of the provisions of the said so-called act against defendant corporation will reduce the receipts of said corporation yearly to the amount of over three hundred and nine thousand ($309,000) dollars, which reduction, with the necessary and continuing costs of renewal of its yards, pens and other improvements, will leave no fair and reasonable compensation to the said corporation, nor any dividends or interest or compensation to your orator or to the other stockholders therein, and will destroy the value of the stock to your orator, and the stock of the other stockholders of said corporation, and the value of the property of said corporation, and render the same worthless, and if said so-called act is enforced against said corporation, it deprives said corporation, and all the stockholders therein, including your orator, of their property, as completely as by a special act expressly providing for its depreciation, confiscation and destruction.

VIII.

That the said so-called act approved March 3, 1897, is unconstitutional and void as contrary to, and in conflict with the provisions of the constitution of the United States, and of the state of Kansas, and especially as contrary to, and in conflict with the provisions of, article 8 of the original amendments to the constitution of the United States and in conflict with the provisions of section 9 of the bill of rights of the constitution of Kansas, in this to wit: That said so-called act permits the infliction of cruel and unusual punishments; that the last

clause of section 7 of the said so-called act provides that any person or persons violating the provisions thereof, shall be deemed guilty of misdemeanor, and upon conviction therefor, ["for each subsequent offense, he or they shall be fined in any sum not less than one thousand dollars, and by imprisonment in the county jail not less than six months;" but the maximum fine and imprisonment is not fixed, thereby permitting fines for each subsequent offense therein referred to to be of any amount exceeding one thousand dollars, and the infliction of imprisonment for any period of time exceeding six months, thereby authorizing and requiring the infliction for each subsequent offense referred to of excessive and unusual fines, and of cruel and unusual punishments, such fines and imprisonment being wholly unlimited; that said last clause of section 7 of said so-called act is also unconstitutional and void in this to wit: that it is contrary to the provisions of the constitution of the United States in that it leaves to judicial discretion without any limitation, the infliction of punishments for each subsequent offense therein referred to by excessive fines and cruel and unusual punishments.

IX.

That the said so-called act approved March 3, 1897, is unconstitutional and void as contrary to, and in conflict with, the provisions of the constitution of the United States, and especially as contrary to and in conflict with the provisions of the fifth and fourteenth amendments thereof, because it is an illegal effort to interfere with the lawful rights, powers and privileges of the defendant corporation having the right and power to seek and obtain such compensation as it properly can for the use of its own property, and the sale of proper articles, and is also an illegal effort to interfere with and abridge the lawful rights, powers, privileges and immunities, of your orator and the other stockholders of defendant corporation, who are seeking and trying to obtain, by having invested in said stock such compensation as they legally can for the use of their own money and property; and therefore said so-called act is nothing else than an effort of the legislature of the state, and of the state of Kansas, to regulate the private business of a private corporation, and of private individuals, and to limit, abridge and destroy, the compensation which the said corporation may legally exact and collect for the use of its own property, and for its stockholders; and said so-called act, and the provisions thereof, have not been and are not now exercised, and are not proposed to be exercised, by said state in any matter involving the public health, or the public morals, or of any other legitimate police power.

X.

That the said so-called act, approved March 3, 1897, and all of the various sections thereof, are unconstitutional and void as contrary to, and in conflict with the third clause of section 8, article I, of the constitution of the United States, which confers upon congress power to regulate commerce with foreign nations and among the several states, and the several acts of congress passed in pursuance thereof, in this, to wit:

That the said Kansas City Stock Yards Company, defendant, owns and operates extensive and costly stock yards as aforesaid, in the county of Wyandotte, and state of Kansas, in the vicinity of the mouth of the Kansas river, in and near to what is known as Kansas City, Kansas, and in Jackson county, in the state of Missouri, and in and near to what is known as Kansas City, Missouri; and said yards in both states have all the usual and necessary conveniences for the reception, driving, feeding and shipment of cattle and other stock; and in carrying on its business and operating its yards, it receives almost daily, not only from this state and from the state of Missouri, but also from Texas, Colorado, Nebraska and 23 other states and territories, great numbers of cattle and other stock, which are transported by the railroads to the said defendant corporation for care, feeding and shipment in this state, and Missouri, and when so transported by the railroads of the several states and territories to the yards of the defendant corporation in this state, and in the state of Missouri, they are yarded, fed, cared for, sold and shipped; that the yards in the state of Kansas and Missouri are so connected and carried on that the cattle and other stock go from one state to the other in the said yards, and are driven to and from the said yards in both states as the business of the stock raiser and shipper demands, and as the rules and regulations of the stock yards company require; that very frequently cattle so received from the states of Missouri and Kansas, and also from the other states aforesaid, are shipped from the yards of defendant to Chicago in the state of Illinois, and also to other cities and states outside of the states of Kansas and Missouri; that the said business of the said corporation is not carried on exclusively within the limits of the state of Kansas, but as aforesaid stated, also within the state of Missouri and other states; that the said yards, railroad tracks and switches and other property of the said corporation are a part of commerce itself, are necessarily connected with interstate commerce, and that the said defendant is engaged in interstate commerce, and the provisions of the said so-called act affect commerce, and amount to a regulation of it within the meaning of the constitution of the United States; and therefore the provisions of the said so-called act belong to that class

of powers which cannot be exercised by the legislature of Kansas, or by the state itself, or by any other state of the union.

XI.

That the said so-called act, approved March 3, 1897, and all of the various sections thereof are contrary to and in conflict with the provisions of an act of congress, approved May 29, 1884, entitled "An Act for the establishment of a bureau of animal industry, to prevent exportation of diseased cattle, and to provide means for the suppression and extirpation of pleuro-pneumonia and other contagious diseases among domestic animals," and of an act of congress approved August 8, 1894, making appropriation for the department of agriculture for the fiscal year ending June 30, 1895, and the regulations concerning cattle transportation, made and promulgated, in accordance with the provisions of said acts of congress aforesaid, by the secretary of the United States Department of Agriculture, at his office in Washington, District of Columbia, on January 27, 1896, in this, to wit:

That under the provisions of section 4 of said so-called act, referred to herein as exhibit "A," it is expressly provided that "there shall be but one yardage charged," and it is further provided therein that "for driving, yarding, watering and weighing of cattle, fifteen cents per head" may only be charged, demanded and collected by the defendant corporation for doing such service in the state of Kansas; that under the said regulations concerning cattle transportation, so made and published as aforesaid by the secretary of the United States Department of Agriculture, places, pens, and grounds are specially set apart by the defendant corporation, in the county of Wyandotte and state of Kansas, in the vicinity of the mouth of the Kansas river, consisting of about forty (40) acres of land, called "quarantine grounds," where cattle transported by rail to the defendant corporation, between the 15th day of February and the 15th day of November of each and every year, from the area south of or below the federal quarantine line, legally established and designated under the acts of congress aforesaid, are unloaded to be fed, watered, cared for and sold for slaughter or shipped therefrom, as provided by the said regulations of the United States Department of Agriculture; that large numbers of cattle are so transported yearly to and unloaded in said places, pens, and grounds so set apart by the defendant corporation, in accordance with said regulations concerning said cattle so transported; that such cattle must be placed in separate yards, pens and grounds, and no other cattle admitted thereto; that the same must be kept carefully cleansed and disinfected, at great cost, as provided by the regulations concerning such cattle so transported; that to water, feed and take care of cattle and other stock in the places, pens

and grounds so kept by the defendant corporation for quarantine purposes, the prices fixed in section 4 of said so-called act, referred to herein as exhibit "A," are wholly insufficient and not compensatory for the service, attention and yardage, absolutely necessary to comply with the said regulations aforesaid; and if the said defendant corporation is restricted to the maximum prices fixed in said section 4 of the said so-called act, then said cattle so transported by rail from said area south of or below said federal quarantine line, cannot be properly fed, watered, cared for and yarded by the defendant corporation in accordance with the requirements of said regulations, as aforesaid stated, and therefore, on account of the maximum charges and prices fixed in said section 4 of said so-called act, to be collected for yardage, and the prices to be charged under section 5 of said so-called act, for hay, corn and other grain, if enforced against the said corporation it might be compelled to refuse to permit said cattle to be unloaded for feed, water, care, attention, yardage, sale and shipment, as aforesaid, in its special pens, places and grounds so set apart for the reception of said cattle; and the provisions of said so-called act therefore interfere with the carrying out of the regulations aforesaid concerning said cattle transportation and the acts of congress aforesaid, and will deprive the said defendant corporation and your orator and the other stockholders of said corporation from obtaining reasonable, fair and just compensation for the yardage and feeding of said cattle so transported through the state of Kansas from the area south of and below the federal quarantine line aforesaid, and will also prevent and forbid the owners and shippers of such cattle from having sufficient, convenient and proper quarantine grounds in the county of Wyandotte, state of Kansas, where their said cattle can be fed, watered, cared for, sold or shipped, in accordance with the said regulations concerning such cattle transportation.

XII.

That by said section 8 of said so-called act, referred to herein as exhibit "A" it is made the duty of the said Louis C. Boyle, as attorney general of the state of Kansas, to prosecute all of the violations of the provisions of said act; that your orator fears that the said attorney general may cause the defendant corporation and any and all of its officers and agents, who shall violate any of its provisions, to be arrested and prosecuted; that he will attempt to enforce said so-called act through the courts of Wyandotte county, Kansas, and through the courts of the state of Kansas, by a multiplicity of criminal actions or proceedings against each and every person failing or refusing to comply with the provisions thereof, including the said defendant corporation and its officers and agents, thereby greatly harassing and annoy-

ing the said defendant corporation and its officers and agents and causing them great expense and consuming valuable time, unless the said defendant corporation, its officers and agents, shall put in force at once the said charges and prices specified in said sections 4 and 5 of said so-called act, and shall obey and carry out all of the terms and provisions of said act and each section thereof. And your orator fears that the said Louis C. Boyle, as attorney general, will proceed at once to carry into force said arrests and prosecutions unless immediately restrained by the order and injunction of this honorable court.

XIII.

That heretofore, to wit, on the 12th day of March A. D. 1897, the Kansas City Stock Yards Company, and also Charles F. Morse, a director, vice-president and general manager of said corporation, and also at present the acting president of said corporation, and being the only managing director hereof, on account of the passage of said so-called act by the legislature of the state of Kansas, and the heavy penalties therein provided, and the fear that said Louis C. Boyle, as attorney general aforesaid, will at once proceed to arrest and prosecute said corporation and its officers and employees and to save the defendant corporation, its officers, agents, servants and employees from being so arrested, harassed and annoyed by the said Louis C. Boyle, as attorney general, in attempting to enforce the provisions of said so-called act notwithstanding the invalidity of said act, informed your orator, as such stockholder as aforesaid, that the provisions of the said so-called act would be applied by the defendant corporation, its officers and agents, to the operation of its yards in the state of Kansas, and that all the provisions therein obtained concerning charges for yardage or otherwise, and all the prices for the sale and delivery of hay, corn, and other grain, therein fixed, would be observed and carried out in the state of Kansas; and that said so-called act and all the terms thereof would be observed and obeyed by the said defendant corporation, its officers and agents; and also informed your orator that on the 13th day of March, 1897, the prices fixed in said section 4 of said so-called act would be at once ordered and put in force in the operation of the yards and property of said defendant corporation in the state of Kansas, and that no greater prices would be demanded, exacted or collected for driving, yarding, watering and weighing cattle and other stock than as therein specified; and also, that said defendant corporation, its officers and agents would sell and deliver in the state of Kansas, at the prices fixed in said section 5 of said so-called act, hay, corn and other grain at the prices, terms and weight specified in said section 5 of the said so-called act; and also would in all other ways comply with the provisions of the said act, because of the heavy fines and

penalties therein provided and because of the fear of arrests and prosecutions as hereinbefore alleged, notwithstanding the invalidity of such acts.

XIV.

That heretofore, on the 12th day of March, 1897, your orator, as a stockholder of said defendant corporation and as interested in the economical and successful management of the business of said corporation, and who was then and there a stockholder and shareholder at the time of the transactions complained of, desiring to secure, on the part of the managing director of said defendant corporation, a revocation of said order and directions of said defendant corporation, and of its said acting president and sole managing director, to put in force the provisions of said act aforesaid, did serve a notice in writing upon said defendant corporation and Charles F. Morse, as the acting president and managing director of said corporation, demanding that said orders and directions aforesaid to put in force the said so-called act and all of its provisions in the operation of the stock yards and property of said defendant corporation be revoked and set aside upon the ground that the said so-called act is unconstitutional and void, and also demanding that the said defendant corporation and the said managing director aforesaid should continue to exact, receive and collect the rates and prices now existing in the operation of the business of the said defendant corporation for driving, yarding, watering and weighing stock, and also in selling and delivering hay, corn and other grain, so that its property would yield some compensation for services performed, sales made, and the business carried on.

And your orator alleges that said defendant corporation and the said Charles F. Morse, acting president and sole managing director as aforesaid, have each refused to comply with the request of your orator, and wholly disregard the same. And your orator hoped that the said defendant corporation and the said Charles F. Morse, as its acting president and as its sole managing director, and the other officers and agents of said corporation, would have complied with the reasonable request of your orator, as in justice and equity the said defendant corporation and its officers and agents should have done; but now, so it is, that the said defendant corporation and the said Charles F. Morse, as such acting president and as such sole managing director, and the other officers and agents of said defendant corporation, under his control and direction, to the great wrong and injury of your orator in the premises, absolutely refuse to comply with such reasonable and proper request.

And your orator further says that the cause of the failure of your orator to obtain a revocation of said order and directions of the said

defendant corporation and of the said Charles F. Morse, as a director, vice president and general manager and as the acting president of said corporation and as the sole managing director thereof, is as herein stated, that the said defendant corporation and the said Charles F. Morse, as such officer aforesaid, notwithstanding the invalidity of the so-called act of the legislature of the state of Kansas, referred to as exhibit "A", are in fear of the annoyance, harassment, humiliation, and expense to which the said defendant corporation and the said Morse and the other officers, agents, servants and employes of said corporation will be immediately subjected under the so-called act herein referred to, and especially so if its provisions are attempted to be enforced by Louis C. Boyle, as attorney general, as is now proposed and threatened by him, as aforesaid stated, or any other officer of the state of Kansas; and therefore the said defendant and the said Charles F. Morse, as officer of said corporation, absolutely refuse to secure to your orator such action, or any action, as he has demanded and desires on the part of and from the said corporation and of and from the managing directors thereof.

And your orator further says that this suit is not a collusive one with the defendants or any other person or party, to confer on the above entitled court of the United States jurisdiction of a case which it would not otherwise have cognizance of, but your orator alleges that such suit is brought in good faith, for the protection of his own interests in the defendant corporation, and to prevent his said stock and his property therein from being depreciated, lost and destroyed, in violation of law and the provisions of the constitution of the United States as aforesaid.

XV.

And your orator says that as before stated, the enforcement of the provisions of said so-called act against the defendant corporation, and its officers and agents, and the observance of the provisions of said so-called act, fixing a maximum charge to be made by said defendant corporation for services rendered, accommodations furnished, and hay, corn and other grain sold by the said defendant corporation, as is now proposed and threatened to be done by them, will deprive the defendant corporation of the power of exacting reasonable and fair compensatory rates for yardage and other services rendered, and for hay, corn and other grain sold in its yards, and will deprive it of the use of its property and, in effect, of the property itself, without the due process of law; and if the said defendant corporation and its officers and agents are allowed to put in force the maximum rates and prices aforesaid, specified in said so-called act, your orator and the other stockholders of said defendant corporation will be unable to secure a reasonable

per cent. on their money invested in said corporation, and in the stock and property thereof, and will be unable from the earnings of said defendant corporation, to obtain any reasonable and fair compensation, dividend or interest, on the actual value of their said stock, as the said defendant corporation cannot, under such maximum rates, charges and prices, earn any reasonable or fair compensation, interest or dividend on the present actual value of its property.

And your orator says that he has the right to demand of the said defendant corporation and of the said Charles F. Morse, as acting president and sole managing director thereof, that the business of said corporation shall be carefully, properly, economically and successfully managed, as heretofore it has been done, and that such reasonable rates and compensation shall be exacted, demanded and collected for services rendered, accommodations furnished, and for the hay, corn and other grain sold by said defendant corporation, so that the said corporation may earn reasonable and fair compensation, interest or dividends, on the present actual value of its property, and if said corporation continues in force its present existing rates, charges and prices, it can and will earn reasonable and fair compensation, interest and dividends on the present actual value of its property, which can be properly divided among the stockholders of said corporation, including your orator.

And your orator further says he fears that if such destructive maximum rates, charges and prices are put in force, as aforesaid, your orator and the other stockholders of said defendant corporation will suffer great and irreparable injury, for which damages at law would be no adequate remedy; and said defendant corporation, and the officers and agents thereof, will carry out their said orders and directions aforesaid, unless restrained at once by the order and injunction of this honorable court.

In Consideration Whereof, and forasmuch as your orator is remediless in the premises at and by the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable, therefore your orator prays the decree of this honorable court, adjudging that it is the duty of the said defendant corporation and the said Charles F. Morse, acting president, general manager and sole managing director of said defendant corporation, for the benefit of said corporation and of your orator and the other stockholders of said corporation, to revoke at once the orders and directions to put into force the provisions of said so-called act, referred to herein as exhibit "A" and the maximum charges and prices therein specified, and that it is the duty of said defendant corporation and the said Charles F. Morse, acting president, general manager and

sole managing director, for the pecuniary benefit of your orator and the other stockholders of said defendant corporation, to maintain and operate the stock yards of said defendant corporation herein named in the same manner as they have been heretofore economically and successfully operated, and to charge for the services to be furnished, for yardage and other matters, the present existing charges (which are fair, reasonable and just) and also to sell and deliver hay, corn and other grain to stock raisers, shippers and other persons, upon the same terms and for the same prices and in the same way such articles are now sold by said defendant corporation (which said prices under all the circumstances and conditions, are fair, reasonable and just;) and that said defendant corporation, and each of its said officers and agents named as defendants herein, shall be enjoined from obeying, observing or putting into force any of the provisions of said so-called act; and that said order and injunction issue against said defendant corporation and the said Charles F Morse, as acting president and sole managing director thereof, and each of the other officers and agents of said defendant corporation, made parties defendant herein, commanding them and each of them to refrain from putting into force the provisions of the said so-called act or any part thereof.

That the said Louis C. Boyle, as attorney general, be adjudged and decreed from attempting, as against said defendant corporation or any of its officers, agents, servants, or employes, to enforce the provisions of the said so-called act or any part thereof. And also, that said order and injunction issue against the said Louis C. Boyle, as attorney general, commanding him to refrain from harassing and annoying, by prosecution or otherwise, under the provisions of the said so-called act, the defendant corporation, the said Charles F. Morse, or any of the other officers, servants, agents or employes of the said defendant corporation herein named.

That the final mandatory order and injunction of this court in this case issue, compelling said defendant corporation and the said Charles F. Morse and each of the other officers and agents of said defendant corporation herein named, to operate and maintain the said stock yards of the said defendant corporation in the state of Kansas as they are now operated and maintained, and that they exact and collect the same charges for services performed and the same prices now demanded and received, wholly disregarding the said so-called act and all of the provisions thereof.

That a final order, judgment and decree issue that the said so-called act, approved March 3, 1897, herein referred to as exhibit "A" and made a part of this bill of complaint, is unconstitutional and void and of no validity, force or effect whatever; and that all of said de-

fendants and each of them be enjoined from enforcing or attempting to enforce the said so-called act or any of the provisions thereof.

That a preliminary injunction may issue at once, upon the filing of this bill of complaint, against the said defendant corporation and each of its officers and agents named as defendants herein, during the pendency of this suit, strictly commanding and enjoining the said defendants and each of them, under the pains and penalties which may fall upon them and each of them in case of disobedience, that they forthwith, and until the further order, judgment and decree of this court, desist from putting into force the said maximum rates, charges and prices specified in said so-called act aforesaid; and against the said Louis C. Boyle, as attorney general, commanding and enjoining him to desist from enforcing or attempting to enforce the said so-called act against said defendant corporation and its officers and agents named as defendants herein, by arrest or otherwise, through the courts of the state or otherwise.

For in as much as your orator is without relief in a court of law, may it please this honorable court to grant unto your orator a writ of subpœna, to be directed to the Kansas City Stock Yards Company a corporation, Charles F. Morse, as director, general manager, acting president and sole managing director of the said Kansas City Stock Yards Company; Harry P. Child, as the assistant general manager of the said corporation; Eugene Rust, as the general superintendent of the said corporation; Elliott E. Richardson, as the secretary of the said corporation; and Louis C. Boyle as attorney general of the state of Kansas, commanding them and each of them, at a certain date and under the pain and penalty therein mentioned, personally to be and appear before this honorable court, then and there full and true, direct and perfect answer to make to all and singular the premises (but not under oath, answer under oath being hereby expressly waived); and further to stand to, and abide by such further order and direction herein as to this honorable court may seem just; and for such further and other order and direction herein as in equity and good conscience your orator may be entitled to, though not specifically prayed herein.

And your orator will ever pray.

CHARLES U. COTTING,
By C. J. Hubbard, Authorized Agent.

WAGGENER, HORTON & ORR,
Solicitors for the Complainant.

ALBERT H. HORTON,
Of Counsel.

United States of America,
First Division of District of Kansas. } ss.

On this 13th day of March, A. D. 1897, before me, personally appeared C. J. Hubbard, of Kansas City, Missouri, being of lawful age, who made solemn oath that he was the duly authorized agent of the said Charles U. Cotting, the above named complainant, to file the foregoing bill in the United States Circuit Court in and for the District of Kansas, and in the First Division thereof, and to employ solicitors and counsel for the said Charles U. Cotting, complainant for that purpose, and to attend for said Charles U. Cotting, complainant to the prosecution of said suit and the proceedings thereof; that the said Charles U. Cotting, complainant, does not reside in and is not now within the district of Kansas or the district of Missouri, or within any of the judicial districts composing the Eighth Circuit of the United States; and he further made solemn oath that he had read the foregoing bill of complaint subscribed by the complainant through the affiant as his authorized agent therefor, and knows the contents thereof; and that he is personally acquainted with the matters and things alleged in said foregoing bill of complainant, and that the same are true of his own personal knowledge; that at the instance of, and under the direction of the said Charles U. Cotting, complainant, he personally made and served in the name of the said Charles U. Cotting, complainant, and for him and as his duly authorized agent therefor, the written requests and efforts alleged in said bill of complaint of the said Charles U. Cotting, complainant, to secure the action therein stated, as said complainant desired on the part of the managing directors of the Kansas City Stock Yard Company, and also upon said company, and is personally acquainted as the authorized agent of said Charles U. Cotting, complaint, with the said particular efforts of the said Charles U. Cotting, complainant, to secure the said action as aforesaid, and of the failure of the said Charles U. Cotting, complainant, to obtain such action on the part of and from the said managing directors of the said defendant corporation and on the part of and from the said defendant corporation itself; and also personally knows of the cause of the failure of said Charles U. Cotting, complainant, to obtain such action as is fully alleged in the said bill of complaint.

That this suit is not a collusive one on the part of the complainant or on the part of this affiant, his duly authorized agent, to confer on the United States Circuit Court for the District of Kansas, or on any court of the United States, jurisdiction of a case of which it would not otherwise have cognizance.

And further this affiant saith not. C. J. HUBBARD.

Subscribed and sworn to before me, this 13th day of March, A. D. 1897. GEO. F. SHARITT, Clerk.

[SEAL.]

EXHIBIT "A."

Committee Substitute for House Bill No. 87.

AN ACT

Defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing restrictions in the trade of dead animals and prescribing penalties for violations of this act.

Be it enacted by the Legislature of the State of Kansas:

SECTION 1. Any stock yards within this state, into which live stock is received for the purpose of exposing or having the same exposed for sale or feeding, and doing business for a compensation, and which for the preceding twelve months shall have had an average daily receipt of not less than one hundred head of cattle, or three hundred head of hogs, or three hundred head of sheep, are hereby declared to be public stock yards.

SEC. 2. Any person, company or corporation owning or operating any such public stock yard or stock yards in this state is hereby declared to be a public stock yards operator, whether living or being within this state or not.

SEC. 3. Every such public stock yards operator or operators shall annually on the 31st day of December of each year, file with the secretary of state, an itemized statement certified and sworn to, setting forth the number of head of cattle, calves, sheep, hogs, horses and mules received in his or their public stock yards during the year next preceding.

SEC. 4. It shall be unlawful for the owners, proprietors, or the employes of the owners or proprietors of any such public stock yards within this state, to charge for driving, yarding, watering, and weighing of stock, greater prices than the following: For driving, yarding, watering and weighing of cattle, 15 cents per head; calves 8 cents per head; hogs 6 cents per head; sheep 4 cents per head; and there shall be but one yardage charged.

SEC. 5. It shall be unlawful for the owner, owners or proprietors, or their employes, or any such stock yards within this state, to sell and deliver at the rate of less than two thousand pounds for a ton of hay, or any part thereof, the same to be of good quality, or to charge for or to sell the same at more than one hundred per cent. above the average market price, or value of such hay upon the markets of the towns or cities wherein such stock yards are located, upon the day preceding such sale and delivery; and it shall also be unlawful fo any such owners, or proprietors, or employes, to sell and deliver less than seventy pounds of corn in the ear for a bushel, or less than fifty-six pounds of shelled corn for a bushel or to charge for or to sell the

same at more than one hundred per cent. above the average market price or value of such ear corn or shelled corn on the markets of the towns or cities wherein said stock yards are located, on the day next preceding such sale and delivery. All feed not above named shall be sold for no greater per cent. of profit than hereinbefore provided.

SEC. 6. It shall be unlawful for the owners or proprietors of any stock yards to prohibit the owner or owners, or the representatives of any owner or owner of any dead stock in such yard or yards from selling such dead stock to any person or persons.

SEC. 7. That any person or persons violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined for the first offense not more than one hundred dollars, for the second offense not less than one hundred dollars nor more than two hundred dollars; and for the third offense not less than two hundred dollars nor more than five hundred dollars and by imprisonment in the county jail not exceeding six months for each offense; and for each subsequent offense he or they shall be fined in any sum not less than one thousand dollars and by imprisonment in the county jail not less than six months.

SEC. 8. It is hereby made the duty of the attorney general to prosecute all violations of the provisions of this act.

SEC. 9. All acts or parts of acts in conflict with this act are hereby repealed.

SEC. 10. This act shall take effect and be in force from and after its publication in the official state paper.

I hereby certify that the above bill originated in the house, and passed that body March 1, 1897.

W. D. STREET, Speaker of the House.
A. D. GILPIN, Chief Clerk of the House.

Passed the Senate March 2, 1897.

A. M. HARVEY, President of the Senate.
M. WATSON, Secretary of the Senate.

Approved March 3, 1897.

J. W. LEEDY, Governor.

State of Kansas, }
Office of Secretary of State. }

I, W. E. Bush, secretary of state of the state of Kansas, do hereby certify that the above and foregoing is a correct copy of the original enrolled bill now on file in my office.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal, this 8 day of March, 1897.

[SEAL.]

W. E. BUSH, Secretary of State.
By C. M. ROSS, Assistant Secretary of State.

ENDORSED: No. 7427. Charles U. Cotting vs. Kansas City Stock Yards Company, *et al.* Bill of complaint. Filed Mch. 13, 1897. GEO. F. SHARITT, Clerk.

United States of America, district of Kansas, ss.

In the circuit court of the United States for the district of Kansas, first division.

CHARLES U. COTTING, *Complainant*,

vs.

KANSAS CITY STOCK YARDS COMPANY, a corporation, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, and LOUIS C. BOYLE, as attorney general of the state of Kansas, *Defendants.*

No. 7427. In equity.

Whereas, Charles U. Cotting has presented his bill of complaint and affidavit in the above entitled suit, wherein, among other things, he prays that the Kansas City Stock Yards Company, Charles F. Morse, as the general manager, acting president and sole managing director of said corporation, Harry P. Child, as assistant general manager of said corporation, Eugene Rust, as general superintendent of said corporation, and Elliott E. Richardson, as secretary of said corporation, be commanded, enjoined and restrained from obeying and observing a so-called act of the legislature of the state of Kansas, approved March 3d, 1897, and known as "Committee Substitute for House Bill No. 87," and entitled "An Act defining what shall constitute public stock yards, defining the duty of the person or persons operating the same, and regulating the charges thereof and removing restrictions in the trade of dead animals by prescribing penalties for the violation of this act;" and from putting into force in the business of said defendant corporation the maximum rates, charges and prices specified in the so-called act aforesaid; and wherein, among other things, he prays that the said defendant Louis C. Boyle, as attorney general of the state of Kansas, be enjoined and restrained from enforcing or attempting to enforce the said so-called act or any of the provisions thereof, against the said defendant corporation, its officers, agents, servants and employes by arrest, criminal prosecution or otherwise, as more particularly shown in the bill of complaint herein; and that a final injunction issue commanding said defendant corporation and its officers and agents named as defendants herein to operate and maintain the said defendant corporation and the business thereof, as in said bill of complaint prayed.

NOW THEREFORE, IT IS ORDERED: That the said defendants and each of them show cause before this Court at the City of Topeka, on the 25th day of March, A. D. 1897, at two o'clock P. M. of said day,

or as soon thereafter as counsel can be heard, why the prayer of said bill of complaint for a preliminary injunction as therein prayed for should not be granted, and why the said defendants and each of them, their officers, assistants, agents, servants and employes should not be enjoined and restrained during the pendency of this suit, from obeying, observing and enforcing the provisions of the so-called act of the legislature of the State of Kansas herein referred to; and why the said complainant should not have the relief prayed for in said bill of complaint; that pending the hearing of this matter, the said defendant corporation and Charles F. Morse, as general manager, acting president and sole managing director of said defendant corporation, and the other officers and agents of said corporation named as defendants herein be and they are hereby ordered and restrained to desist and refrain from obeying, observing or putting into force in the operation of the said defendant corporation's business the maximum rates, charges and prices specified in said so-called act aforesaid; and the said Louis C. Boyle, as attorney general of the State of Kansas, is hereby ordered and restrained to desist and refrain from enforcing the provisions of said so-called act against the said defendant corporation, its officers, agents, servants and employes, and from arresting or criminally prosecuting in the courts of the state or otherwise the said defendant corporation, its officers, agents, servants and employes on account of any non-observance or disobedience of the said so-called act or any of its provisions or on account of the failure to fully comply with the terms thereof.

Let a copy of this order, together with a copy of the bill of complaint herein, duly sworn to, be served upon the defendants eight days before the hearing of said matter.

CASSIUS G. FOSTER, Judge.

Endorsed: Filed Mch. 13, 1897. GEO. F. SHARP, Clerk.

Received the within writ at Kansas City, Missouri, on the 16th day of March, 1897, and executed the same by delivering certified copies to the following named defendants mentioned therein, viz:

One copy to Chas. F. Morse, as acting president and general manager of the Kansas City Stock Yards Company.

One copy to Chas. F. Morse, as acting president and general manager, and sole managing director of the said company.

One copy to Harry P. Child, as assistant general manager of said company.

One copy to Eugene Rust, as general superintendent of said company.

One copy to Elliot E. Richardson, as secretary of said company.

All done at Kansas City, in the western district of Missouri, this 16th day of March 1897.

G. Y. GRENSHAW, U. S. Marshal.
By C. MADSON, Office Deputy.

Fees	$10 00
Expenses	1 85
Total	$11 85

Endorsed: Filed March 20, 1897.
GEO. F. SHARITT, Clerk.

United States of America, district of Kansas, ss.

In the circuit court of the United States for the district of Kansas, first division.

FRANCIS LEE HIGGINSON, *Complainant,*

against

KANSAS CITY STOCK YARDS COMPANY, a corporation, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, and LOUIS C. BOYLE, as attorney general of the state of Kansas, *Defendants.*

No. 7453. In equity.

To the honorable judges of the circuit court of the United States for the district of Kansas, first division:

Francis Lee Higginson, a resident and citizen of the State of Massachusetts, and a stockholder of the Kansas City Stock Yards Company, on his own behalf, and on behalf of other stockholders of the Kansas City Stock Yards Company, having like interest herein and similarly situated, who may hereafter join in the prosecution of the suit and become parties herein, and contribute to the expenses hereof, brings this, his bill in equity against the Kansas City Stock Yards Company, a corporation duly created, organized and existing under the laws of the State of Kansas, and a resident and citizen of the State of Kansas, and of the First Division of the said District, having its principal office and place of business in this state, at the city of Kansas City, in this state; Charles F. Morse, a director, vice-president and general manager of the Kansas City Stock Yards Company, and also the managing director of said corporation, and also, at the present time, in consequence of the absence of the president of said corporation in Europe, the acting president thereof, and a resident and citizen of the state of Missouri; Harry P. Child, the assistant general manager of the Kansas City Stock Yards Company, and a resident and citizen

of the state of Missouri; Eugene Rust, the general superintendent of the Kansas City Stock Yards Company, and a resident and citizen of the state of Missouri; Elliott E. Richardson, the secretary of said Kansas City Stock Yards Company, and a resident and citizen of the state of Kansas, and of the first division of said district; and Louis C. Boyle, as attorney general of the state of Kansas, being the duly elected, qualified and acting attorney general of the said state of Kansas, and a resident and citizen thereof, and an inhabitant of the first division of said district; and thereupon your orator complains and alleges:

I.

That your orator, Francis Lee Higginson, is a resident and citizen of the state of Massachusetts, and is a stockholder in the Kansas City Stock Yards Company, being the owner and in possession of 296 shares of the capital stock of said corporation, 200 shares of which have been owned and held by him for more than seven years last past, and which said shares of stock so held, owned and possessed by him, are of the full value of more than five thousand ($5,000) dollars, to wit, of the value of thirty-seven thousand ($37,000) dollars; that your orator invested in, and became the owner of said stock in the said corporation for a valuable consideration to earn and obtain thereon a reasonable and a fair dividend or rate of interest on the actual value thereof; that since your orator became the owner and holder of said stock, up to this time, the said corporation has been so economically and successfully operated and managed, as to produce some profit to your orator, and to the other stockholders of said corporation, who have invested their money in said corporation and in the stock thereof; that your orator is entitled to demand and require that the said corporation shall continue to carry on its business in the future, as in the past, so that the said corporation, if possible shall earn a reasonable and fair dividend or interest on the present actual value of its property, so that your orator as a stockholder therein shall receive some compensation for the use of his money and property invested in said corporation, and in the stock thereof, without prejudice to the rights of others, and for this purpose, and to this end, your orator is entitled to demand of the said Kansas City Stock Yards Company, and the officers and agents thereof, that the said company shall prescribe, exact and collect such just and reasonable rates, charges and compensation from persons doing business with it, or making purchases of hay, corn or other property therefrom, as that the said corporation shall earn a fair and reasonable compensation or interest on the present actual value of its property, if it be possible so to do, in the lawful transaction of its

business. That the amount involved in this suit and the matter in dispute exceeds, exclusive of interest and costs, the sum and value of two thousand dollars and the damages and losses which will accrue to your complainant if the so-called act hereinafter referred to shall be enforced in any respect will largely exceed, exclusive of interest and costs, the sum and value of two thousand dollars.

II.

That the Kansas City Stock Yards Company, defendant, is and for more than twenty years last past has been a corporation duly created, organized and existing under the laws of the state of Kansas, and a citizen and resident thereof, and of the first division of said district, with power to construct, maintain and operate stock yards in this state and in the state of Missouri, and to own real estate for that purpose, with authority also to erect and maintain buildings, hotels, railways, switches, yards, pens, and such other improvements as may be necessary for its purposes, and also with authority for receiving, shipping, yarding, feeding and otherwise caring for horses, mules, cattle and other stock at its yards in Kansas City, Kansas, and in Kansas City, Missouri, with the right of demanding, exacting, and collecting for its services performed, and for its property sold to others, fair compensation, and also such prices therefor as might be agreed upon by the parties interested; that the yards occupied by it in carrying on its business consist of about one hundred and sixty acres, about one hundred and twenty acres of which are situated in this state, and about forty acres thereof in the state of Missouri; that about sixty-five per cent. of the earnings of said corporation are derived from its business carried on in this state, and that about thirty-five per cent. thereof is derived from its business carried on in the state of Missouri; that, for a very large part of this real estate, the said corporation was compelled to pay large prices therefor, because it was absolutely necessary for its use to successfully carry on its business, and because the same was at the time of purchase occupied by a good class of buildings, which it was necessary to remove, and the land so formerly occupied by such buildings is now being used entirely for stock yards purposes; that the improvements at the stock yards consisting of buildings, railroad tracks, switches, viaducts, pens and other improvements are very extensive and maintained in a superior condition, the cattle pens alone covering about eighty acres, all of them either floored with plank, or paved with vitrified brick; that the corporation has hog sheds with a daily capacity of thirty thousand hogs, and sheep sheds with a daily capacity of twenty thousand sheep, and also stables for about four thousand horses and mules; that during the past five years the capacity of the yards of the corporation has

been, to meet the growing demands of business, almost doubled, at a large expenditure of money; that the authorized capital stock of said corporation is seven million, five hundred thousand ($7,500,000) dollars, of which $7,368,650 on December 31, 1896, had been issued; that the present actual value of the property of said corporation, so employed for its stock yards, as aforesaid, is in excess of the value of seven million five hundred thousand ($7,500,000) dollars. That for the year 1896, the total receipts of stock at said stock yards were as follows, to wit:

1,714,532 cattle,
100,166 calves,
993,126 sheep,
2,605,575 hogs,
57,847 horses and mules,

making a total of all stock handled by said yards of 5,471,446; that the gross earnings of the corporation for the year 1896 were one million, twenty-three thousand eight hundred and seventy and $\frac{20}{100}$ dollars, ($1,023,870.20); that the total expenditures were five hundred and forty-nine thousand, three hundred and fifty-one and $\frac{80}{100}$ ($549,351.80) dollars, all of which were necessary for the operation and maintenance of the property, leaving net earnings of four hundred and seventy-four thousand five hundred and eighteen and $\frac{40}{100}$ ($474,518.40) dollars, about six per centum on the capital stock of the corporation for that year; that the yards, pens, and most of the improvements of said stock yards have to be necessarily replaced or renewed every five to seven years, costing large sums of money therefor, and consuming a large amount of the yearly earnings of the said corporation; that the charges now prescribed, exacted and collected by the corporation, and which have existed for several years, are as follows, to wit:

For driving, yarding, watering and weighing cattle, twenty-five cents per head; calves ten cents per head, hogs eight cents per head, and sheep five cents per head; that such charges and prices are fair, reasonable and just, considering all conditions and the services rendered therefor, and only furnish reasonable compensation to the said defendant corporation; that all existing charges and prices of the corporation for hay, corn, and other grain sold or delivered by it, under the conditions and circumstances in which the same are sold and delivered and fed, and the care and attention given by the corporation to cattle and other stock in its yards, in connection with the sale, delivery and feeding of hay, corn and other grain, are fair, just and reasonable, and the operation of the stock yards under such rates, charges and prices, and the collection thereof, only permit the corporation to earn a fair and reasonable compensation or interest on the present actual

value of its property, so necessarily occupied and used by it for stock yards business, and such earnings are about six per centum per annum on the money invested in said corporation, after paying the operating expenses thereof, taxes, and the expenses of the necessary repairs, renewals and the maintenance of the same; that the charges for yardage and feed at the stock yards of the said corporation are the same as those of other stock yards similarly conducted, and the same as the stock yards at St. Louis, Missouri, East St. Louis and Chicago, Illinois, and Omaha, Nebraska; that said defendant corporation makes no charges whatever on any stock that is not sold in the yards when received from railroad companies, and said stock is subject to the order of the owner, and is delivered to the railroads or buyers without charge to the owner; that said stock yards so owned and operated by said corporation have been and are of great pecuniary value and benefit to the stock raisers and shippers of Kansas, Missouri and adjacent states; that the location and operation of the stock yards of said corporation in this state and in Kansas City, Missouri, have induced large packing establishments to locate in Kansas City, Kansas, for the purpose of buying, killing and packing cattle and other stock, thereby furnishing an excellent and convenient market to the stock raisers and shippers of Kansas, Missouri and adjacent states; that fat cattle, sold in Kansas City in 1896, netted an average of nine and three-fourths cents per hundred pounds more than the same stock sold in Chicago the same day, and that hogs netted nine cents more, and sheep seventeen cents more, and that the importance of the stock market at Kansas City to the producers, stock raisers and shippers of Kansas has been greatly increased by the successful operation of the large and extensive stock yards of said corporation at and near Kansas City, Kansas, and at and near Kansas City, Missouri.

III.

That Charles F. Morse, defendant, is a director, vice-president and general manager of the Kansas City Stock Yards Company, and the only managing director thereof, and, at the present time, in consequence of the absence of the president of said corporation in Europe, is also the acting president thereof, and has full authority to fix the rates and prices to be charged by said Stock Yards Company and is a resident and citizen of the state of Missouri; that Harry P. Child is the assistant general manager of said corporation and a citizen and resident of the state of Missouri; that Eugene Rust, defendant, is the general superintendent of said corporation, and a resident and citizen of the state of Missouri; that Elliott E. Richardson is the secretary of said corporation and a resident and citizen of the state of Kansas, and of the first division of said district; and that Louis C.

Boyle, as Attorney General of the state of Kansas is a citizen and resident of the state of Kansas, and an inhabitant of the first division of said district, and the duly elected, qualified and acting Attorney General of said state.

IV.

That on the third day of March, 1897, Honorable John W. Leedy, as Governor of the State of Kansas, approved a certain so-called act "House Bill No. 87" and entitled "An Act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating the charges thereof, and removing restrictions in the trade of dead animals, and prescribing penalties for the violations of this act"; that in the said so-called act, it was provided the same should take effect and be in force from and after its publication in the official state paper of the state of Kansas; that a certified copy of the said so-called act is hereto attached, marked exhibit "A" and made a part of this bill of complaint, to which reference is hereby made as if fully incorporated herein; that the said so-called act was published in the official state paper of the state on the 12th day of March A. D. 1897; that the said so-called act is now, by the said defendant, Louis C. Boyle, as Attorney General of the State of Kansas, alleged to be in full force, virtue and effect as a valid law of the state of Kansas, the said so-called act providing among other things, that "It shall be the duty of the Attorney General to prosecute all violations of the provisions thereof".

V.

That the said so-called act, approved March 3d, 1897, and heretofore referred to as exhibit "A," is unconstitutional and void in this, to wit: that under the provisions of the constitution of the United States, and particularly under the third clause of section 8, article 1, and of article 8, and of the fifth and the fourteenth amendments thereof, neither the legislature of the state of Kansas, nor the state of Kansas has power to enact or enforce the so-called act, or any of the provisions thereof so as to include or apply to the Kansas City Stock Yards Company, nor any legislative power or other authority to define the duties of the said corporation in carrying on and operating its business, or any legislative power or other authority to regulate the charges of said corporation for services rendered by it to stock shippers or other persons, or any legislative power or other authority to abridge in any manner its rights, privileges and immunities, as it is attempted to do by the said so-called act, or any legislative power or other authority to prescribe any penalties whatever for the violations of the said so-called act, or any of its provisions.

VI.

That the said so-called act, approved March 3d, 1897, is unconstitutional and void as contrary to, and in conflict with, the constitution of the United States, and especially as contrary to, and in conflict with, the provisions of the fourteenth amendment thereof, in this, to wit: That it denies to the Kansas City Stock Yards Company, within the jurisdiction of the state of Kansas, the equal protection of the laws in that, by its provisions, it is made to apply only to such stock yards within the state "into which live stock is received for the purpose of exposing or having the same exposed for sale, or feeding, and doing business for a compensation, and which, for the preceding twelve months, shall have had an average daily receipt of not less than one hundred head of cattle, or three hundred head of hogs or three hundred head of sheep," in that, by such provision, it singles the Kansas City Stock Yards Company out of all the other citizens and corporations within the state of Kansas, without giving to such corporation any specific or corresponding benefit therefor and restricts the application of the said so-called act to the Kansas City Stock Yards Company alone, there being no other stock yards operated in the state of Kansas, except the defendant corporation which for the preceding twelve months has "an average daily receipt of not less than one hundred head of cattle or three hundred head of hogs or three hundred head of sheep"; that, while the said so-called act in controversy does not specifically name the Kansas City Stock Yards Company, it so describes it that there can be no possible doubt with regard to the attempted exclusive application of the said so-called act to said defendant corporation, and this is substantially the same as naming the said corporation in the said so-called act; that the said so-called act not only attempts to fix the charges of said corporation for driving, yarding, watering and weighing stock, but also attempts to fix the prices at which it may sell and deliver hay, corn and other grain, and therefore said corporation is not treated as other owners and operators of stock-yards within the state are treated which for the preceding twelve months have a less "average daily capacity than one hundred head of cattle, or three hundred head of hogs or three hundred head of sheep"; nor is it treated as other corporations or persons are treated who are engaged in selling and trading in personal property, nor is it treated equally with such other corporations or persons; that the said so-called act is strictly class legislation, arbitrarily made and enacted to discriminate against the defendant corporation, and your orator and other stockholders of said corporation, and prevents such corporation from being treated as other stock yards corporations are treated, and as other corporations and persons are treated, engaged in similar business in the state, under like conditions and circumstances.

VII.

That the said so-called act approved March 3d, 1897, is unconstitutional and void as contrary to and in conflict with the provisions of the constitution of the United States, and especially as contrary to and in conflict with the provisions of the fifth and fourteenth amendments thereof, in this, to wit: That thereby the state of Kansas is attempting to deprive the Kansas City Stock Yards Company, and your orator as a stockholder therein, of liberty and property without due process of law and without just compensation therefor; that said defendant corporation is entitled, if it can do so in the operation of its business, to earn a fair and reasonable compensation or interest yearly on the present actual value of its property, which said present actual value thereof exceeds the sum of seven million, five hundred thousand dollars, and if the said so-called act is, or shall be applied to all the business of said corporation, and its provisions thereof shall be enforced against said defendant, its officers, agents and servants, then the legislature of the state of Kansas, and said state, have unlawfully assumed the right, and illegally attempt to exercise the right, to reduce the rates and charges of said corporation for the driving, yarding, watering and weighing of cattle in this state, and also abridging, restricting and limiting said corporation in the prices at which it may sell and deliver hay, corn and other grain, so as to diminish and reduce its charges, rates, revenues and earnings in such a manner and to such an extent as to prevent it, and your orator, and the other stockholders therein, from earning, receiving or obtaining a reasonable per cent. for the money invested in said corporation, and preventing said corporation, and your orator, and the other stockholders therein, from earning, receiving or obtaining a reasonable or fair compensation, interest or dividend upon the present actual value of the property of said corporation; that the enforcement of the provisions of the said so-called act against defendant corporation will reduce the receipts of said corporation yearly to the amount of over three hundred and nine thousand ($309,000), dollars which reduction, with the necessary and continuing costs of renewal of its yards, pens and other improvements, will leave no fair and reasonable compensation to the said corporation, nor any dividends or interest or compensation to your orator or to the other stockholders therein, and will destroy the value of the stock of your orator, and the stock of the other stockholders of said corporation, and the value of the property of said corporation, and render the same worthless, and if said so-called act is enforced against said corporation, it deprives said corporation, and all the stockholders therein, including your orator, of their property, as completely as by a special

act expressly providing for its depreciation, confiscation and destruction.

VIII.

That the said so-called act, approved March 3d, 1897, is unconstitutional and void as contrary to, and in conflict with the provisions of the constitution of the United States, and of the state of Kansas, and especially as contrary to, and in conflict with the provisions of article 8 of the original amendments to the constitution of the United States and in conflict with the provisions of section 9 of the Bill of Rights of the Constitution of Kansas, in this, to wit: That said so-called act permits the infliction of cruel and unusual punishment; that the last clause of section 7 of the so-called act provides that any person or persons violating the provisions thereof, shall be deemed guilty of a misdemeanor, and upon conviction therefor, "for each subsequent offense, he or they shall be fined in any sum not less than one thousand dollars, and by imprisonment in the county jail not less than six months"; but the maximum fine and imprisonment is not fixed, thereby permitting fines for each subsequent offense therein referred to to be of any amount exceeding one thousand dollars, and the infliction of imprisonment for any period of time exceeding six months, thereby authorizing and requiring the infliction for each subsequent offense referred to of excessive and unusual fines, and of cruel and unusual punishments, such fines and imprisonment being wholly unlimited; that said last clause of section 7 of said so-called act is also unconstitutional and void in this, to wit: that it is contrary to the provisions of the constitution of the United States in that it leaves to judicial discretion, without any limitation, the infliction of punishments for each subsequent offense therein referred to by excessive fines and cruel and unusual punishments.

IX.

That the said so-called act approved March 3d, 1897, is unconstitutional and void as contrary to, and in conflict with, the provisions of the constitution of the United States, and especially as contrary to and in conflict with the provisions of the fifth and fourteenth amendments thereof, because it is an illegal effort to interfere with the lawful rights, powers and privileges of the defendant corporation having the right and power to seek and obtain such compensation as it properly can for the use of its own property, and the sale of proper articles, and is also an illegal effort to interfere with and abridge the lawful rights, powers, privileges and immunities, of your orator and the other stockholders of defendant corporation, who are seeking and trying to obtain, by having invested in said stock, such compensation as they legally can for the use of their own money and property; and

therefore said so-called act is nothing else than an effort of the legislature of the state, and of the state of Kansas, to regulate the private business of a private corporation, and of private individuals, and to limit, abridge and destroy, the compensation which the said corporation may legally exact and collect for the use of its own property, and for its stockholders; and said so-called act, and the provisions thereof, have not been and are not now exercised, and are not proposed to be exercised, by said state in any matter involving the public health, or the public morals, or of any other legitimate police power.

X.

That the said so-called act, approved March 3d, 1897, and all of the various sections thereof, are unconstitutional and void as contrary to, and in conflict with, the third clause of section 8, article 1, of the constitution of the United States, which confers upon Congress power to regulate commerce with foreign nations and among the several states, and the several acts of Congress passed in pursuance thereof, in this, to wit:

That the said Kansas City Stock Yards Company, defendant, owns and operates extensive and costly stock yards, as aforesaid, in the county of Wyandotte, and State of Kansas, in the vicinity of the mouth of the Kansas river, in and near to what is known as Kansas City, Kansas, and in Jackson county, in the State of Missouri, and in and near to what is known as Kansas City, Missouri; and said yards in both states have all the usual and necessary conveniences for the reception, driving, feeding and shipment of cattle and other stock, and in carrying on its business and operating its yards, it receives almost daily, not only from this state and from the state of Missouri, but also from Texas, Colorado, Nebraska, and 23 other states and territories, great numbers of cattle and other stock, which are transported by the railroads to the said defendant corporation for care, feeding, and shipment in this state and Missouri, and when so transported by the railroads of the several states and territories to the yards of the defendant corporation in this state, and in the state of Missouri, they are yarded, fed, cared for, sold and shipped; that the yards in the state of Kansas and Missouri are so connected and carried on that the cattle and other stock go from one state to the other in the said yards, and are driven to and from the said yards in both states as the business of the stock raiser and shipper demands, and as the rules and regulations of the stock yards company require; that very frequently cattle so received from the states of Missouri and Kansas, and also from the other states aforesaid, are shipped from the yards of defendant to Chicago in the state of Illinois, and also to other cities and states outside of the states of Kansas and Missouri; that the said

business of the said corporation is not carried on exclusively within the limits of the state of Kansas, but as aforesaid stated, also within the state of Missouri and other states; that the said yards, railroad tracks and switches, and other property of the said corporation, are a part of commerce itself, are necessarily connected with interstate commerce, and that the said defendant is engaged in interstate commerce, and the provisions of the said so-called act affect commerce, and amount to a regulation of it within the meaning of the constitution of the United States; and therefore the provisions of the said so-called act belong to that class of powers which cannot be exercised by the legislature of Kansas, or by the state itself, or by any other state of the Union.

XI.

That the said so-called act, approved March 3d, 1897, and all of the various sections thereof are contrary to and in conflict with the provisions of an act of Congress, approved May 29th, 1884, entitled "An Act for the establishment of a bureau of animal industry, to prevent the exportation of diseased cattle, and to provide means for the suppression and extirpation of pleuro-pneumonia and other contagious diseases among domestic animals," and of an act of Congress, approved August 8, 1894, making appropriation for the Department of Agriculture for the fiscal year ending June 30th, 1895, and the regulations concerning cattle transportation, made and promulgated, in accordance with the provisions of said acts of Congress aforesaid, by the Secretary of the United States Department of Agriculture, at his office in Washington, District of Columbia, on January 27th, 1896, in this, to wit:

That under the provisions of section 4 of said so-called act, referred to herein as "Exhibit A," it is expressly provided that "there shall be but one yardage charged," and it is further provided therein that "for driving, yarding, watering and weighing of cattle, fifteen cents per head" may only be charged, demanded and collected by the defendant corporation for doing such service in the state of Kansas; that under the said regulations concerning cattle transportation, so made and published as aforesaid by the Secretary of the United States Department of Agriculture, places, pens and grounds are specially set apart by the defendant corporation, in the county of Wyandotte and state of Kansas, in the vicinity of the mouth of the Kansas river, consisting of about forty (40) acres of land, called "quarantine grounds," where cattle, transported by rail to the defendant corporation between the 15th day of February and the 15th day of November of each and every year, from the area south of or below the Federal quarantine line, legally established and designated under the acts of Congress

aforesaid, are unloaded to be fed, watered, cared for and sold for slaughter or shipped therefrom, as provided by the said regulations of the United States Department of Agriculture; that large numbers of cattle are so transported yearly to and unloaded in said places, pens, and grounds so set apart by the defendant corporation, in accordance with the said regulations concerning said cattle so transported; that such cattle must be placed in separate yards, pens and grounds, and no other cattle admitted thereto; that the same must be kept carefully cleansed and disinfected, at great cost, as provided by the regulations concerning such cattle so transported; that to water, feed and take care of cattle and other stock in the places, pens and grounds so kept by the defendant corporation for quarantine purposes, the prices fixed in section 4 of said so-called act, referred to herein as "Exhibit A," are wholly insufficient and not compensatory for the service, attention and yardage, absolutely necessary to comply with the said regulations aforesaid; and if the said defendant corporation is restricted to the maximum prices fixed in said section 4 of the said so-called act, then said cattle so transported by rail from said area south of or below said Federal quarantine line, cannot be properly fed, watered, cared for and yarded by the defendant corporation in accordance with the requirements of said regulations, as aforesaid stated, and therefore, on account of the maximum charges and prices fixed in said section 4 of said so-called act, to be collected for yardage, and the prices to be charged under section 5 of said so-called act, for hay, corn and other grain, if enforced against the said corporation, it might be compelled to refuse to permit said cattle to be unloaded for feed, water, care, attention, yardage, sale and shipment, as aforesaid, in its special pens, places and grounds so set apart for the reception of said cattle; and the provisions of said so-called act therefore interfere with the carrying out of the regulations aforesaid concerning said cattle transportion and the acts of Congress aforesaid, and will deprive the said defendant corporation and your orator and the other stockholders of said corporation from obtaining reasonable, fair and just compensation for the yardage and feeding of said cattle so transported through the state of Kansas from the area south of and below the Federal quarantine line aforesaid, and will also prevent and forbid the owners and shippers of such cattle from having sufficient, convenient and proper quarantine grounds in the county of Wyandotte, state of Kansas, where their said cattle can be fed, watered, cared for, sold or shipped, in accordance with the said regulations concerning such cattle transportation.

XII.

That by said section 8 of said so-called act, referred to herein as "Exhibit A," it is made the duty of the said Louis C. Boyle, as Attorney General of the state of Kansas, to prosecute all of the violations of the provisions of said act; that your orator fears that the said attorney general may cause the defendant corporation and any and all of its officers and agents, who shall violate any of its provisions, to be arrested and prosecuted; that he will attempt to enforce said so-called act through the courts of Wyandotte county, Kansas, and through the courts of the state of Kansas, by a multiplicity of criminal actions or proceedings against each and every person failing or refusing to comply with the provisions thereof, including the said defendant corporation and its officers and agents, thereby greatly harassing and annoying the said defendant corporation and its officers and agents and causing them great expense and consuming valuable time, unless the said defendant corporation, its officers and agents, shall put in force at once the said charges and prices specified in said sections 4 and 5 of said so-called act, and shall obey and carry out all of the terms and provisions of said act and each section thereof. And your orator fears that the said Louis C. Boyle, as attorney general, will proceed at once to carry into force said arrests and prosecutions unless immediately restrained by the order and injunction of this Honorable Court.

XIII.

That heretofore, to wit, on the 12th day of March, A. D. 1897, the Kansas City Stock Yards Company, and also Charles F. Morse, a director, vice-president and general manager of said corporation, and also at present the acting president of said corporation, and being the only managing director hereof, on account of the passage of said so-called act by the legislature of the state of Kansas, and the heavy penalties therein provided, and the fear that said Louis C. Boyle, as attorney general aforesaid, will at once proceed to arrest and prosecute said corporation and its officers and employes, and to save the defendant corporation, its officers, agents, servants and employes from being so arrested, harassed and annoyed by the said Louis C. Boyle, as attorney general, in attempting to enforce the provisions of said so-called act notwithstanding the invalidity of said act, publicly gave notice, that the provisions of the said so-called act would be applied by the defendant corporation, its officers and agents, to the operation of its yards in the state of Kansas, and that all the provisions therein contained concerning charges for yardage or otherwise, and all the prices for the sale and delivery of hay, corn and other grain, therein fixed, would be observed and carried

out in the state of Kansas; and that said so-called act and all the terms thereof would be observed and obeyed by the said defendant corporation, its officers and agents; and also publicly gave notice that on the 13th day of March, 1897, the prices fixed in said section 4 of said so-called act would be at once ordered and put in force in the operation of the yards and property of said defendant corporation in the state of Kansas, and that no greater prices would be demanded, exacted or collected for driving, yarding, watering and weighing cattle and other stock than as therein specified; and also, that said defendant corporation, its officers and agents, would sell and deliver, in the state of Kansas, at the prices fixed in said section 5 of said so-called act, hay, corn and other grain at the prices, terms and weight specified in said section 5 of the said so-called act; and also would in all other ways comply with the provisions of the said act, because of the heavy fines and penalties therein provided and because of the fear of arrests and prosecutions as hereinbefore alleged, notwithstanding the invalidity of such act.

XIV.

That heretofore, on the 22d day of March, 1897, your orator, as a stockholder of said defendant corporation and as interested in the economical and successful management of the business of said corporation, and who was then and there a stockholder and shareholder at the time of the transactions complained of, desiring to secure, on the part of the managing directors of said defendant corporation, a revocation of said order and directions of said defendant corporation, and of its said acting president, to put in force the provisions of said act aforesaid, did serve a notice in writing upon said defendant corporation and its directors, demanding that the said defendant corporation and the said managing directors aforesaid should continue to exact, receive and collect the rates and prices now existing in the operation of the business of the said defendant corporation for driving, yarding, watering and weighing stock, and also in selling and delivering hay, corn and other grain, so that its property would yield some compensation for services performed, sales made, and the business carried on, and that said corporation take proper legal proceedings to protect itself and its stockholders from the effect of such law.

And your orator alleges that said defendant corporation and its managing directors as aforesaid, have each refused to comply with the request of your orator, and wholly disregard the same. And your orator hoped that the said defendant corporation and its managing directors, and the other officers and agents of said corporation, would have complied with the reasonable request of your orator, as in justice and equity the said defendant corporation and its officers and agents

should have done; but now, so it is, that the said defendant corporation and such managing directors, and the other officers and agents of said defendant corporation, under their control and direction, to the great wrong and injury of your orator in the premises, absolutely refuse to comply with such reasonable and proper request, unless restrained and ordered so to do by some Court of competent jurisdiction.

And your orator further says that the cause of the failure of your orator to obtain a revocation of said order and directions of the said defendant corporation, and of the managing directors thereof, is as herein stated, that the said defendant corporation and the said directors, notwithstanding the invalidity of the so-called act of the legislature of the state of Kansas, referred to as "Exhibit A," are in fear of the annoyance, harassment, humiliation and expense to which the said defendant corporation and the said Morse and the other officers, agents, servants and employes of said corporation will be immediately subjected under the so-called act herein referred to, and especially so if its provisions are attempted to be enforced by Louis C. Boyle, as attorney general, as is now proposed and threatened by him, as aforesaid stated, or any other officer of the state of Kansas; and therefore the said defendant and the said directors absolutely refuse to secure to your orator such action, or any action, as he has demanded and desires on the part of and from the said corporation and of and from the managing directors thereof, unless so ordered by some court of competent jurisdiction as aforesaid.

And your orator further says that this suit is not a collusive one with the defendants or any other person or party, to confer on the above entitled court of the United States jurisdiction of a case which it would not otherwise have cognizance of, but your orator alleges that such suit is brought in good faith, for the protection of his own interests in the defendant corporation, and to prevent his said stock and his property therein from being depreciated, lost and destroyed, in violation of law and the provisions of the constitution of the United States as aforesaid.

XV.

And your orator says that, as before stated, the enforcement of the provisions of said so-called act against the defendant corporation, and its officers and agents, and the observance of the provisions of said so-called act, fixing a maximum charge to be made by said defendant corporation for services rendered, accommodations furnished, and hay, corn and other grain sold by the said defendant corporation, as is now proposed and threatened to be done by them, will deprive the defendant corporation of the power of exacting reasonable and fair compensatory rates for yardage and other services rendered, and for hay, corn

and other grain sold in its yards, and will deprive it of the use of its property and, in effect, of the property itself, without the due process of law; and if the said defendant corporation and its officers and agents are allowed to put in force the maximum rates and prices aforesaid, specified in said so-called act, your orator and the other stockholders of said defendant corporation will be unable to secure a reasonable per cent. on their money invested in said corporation, and in the stock and property thereof, and will be unable from the earnings of said defendant corporation, to obtain any reasonable and fair compensation, dividend or interest, on the actual value of their said stock, as the said defendant corporation cannot, under such maximum rates, charges and prices, earn any reasonable or fair compensation, interest, or dividend on the present actual value of its property.

And your orator says that he has the right to demand of the said defendant corporation and of the said Charles F. Morse, as acting president and managing director thereof, that the business of said corporation shall be carefully, properly, economically and successfully managed, as heretofore it has been done, and that such reasonable rates and compensation shall be exacted, demanded and collected for services rendered, accommodations furnished, and for the hay, corn and other grain sold by said defendant corporation, so that the said corporation may earn reasonable and fair compensation, interest or dividends, on the present actual value of its property, and if said corporation continues in force its present existing rates, charges and prices, it can and will earn reasonable and fair compensation, interest and dividends on the present actual value of its property, which can be properly divided among the stockholders of said corporation, including your orator.

And your orator further says he fears that if such destructive maximum rates, charges and prices are put in force, as aforesaid, your orator and the other stockholders of said defendant corporation will suffer great and irreparable injury, for which damages at law would be no adequate remedy; and said defendant corporation, and the officers and agents thereof, will carry out their said orders and directions aforesaid, unless restrained at once by the order and injunction of this Honorable Court.

In Consideration Whereof, and forasmuch as your orator is remediless in the premises at and by the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable, therefore your orator prays the decree of this Honorable Court, adjudging that it is the duty of the said defendant corporation and the said Charles F. Morse, acting president, general manager and sole managing director of said

defendant corporation, for the benefit of said corporation and of your orator and the other stockholders of said corporation, to revoke at once the orders and directions to put in force the provisions of said so-called act, referred to herein as "Exhibit A" and the maximum charges and prices therein specified, and that it is the duty of said defendant corporation and the said Charles F. Morse, acting president, general manager and sole managing director, for the pecuniary benefit of your orator and the other stockholders of said defendant corporation, to maintain and operate the stock yards of said defendant corporation herein named in the same manner as they have been heretofore economically and successfully operated, and to charge for the services to be furnished, for yardage and other matters, the present existing charges (which are fair, reasonable and just) and also to sell and deliver hay, corn and other grain to stock raisers, shippers and other persons, upon the same terms and for the same prices and in the same way such articles are now sold by said defendant corporation, (which said prices under all the circumstances and conditions, are fair, reasonable and just); and that said defendant corporation, and each of its said officers and agents named as defendants herein, shall be enjoined from obeying, observing or putting into force any of the provisions of said so-called act; and that said order and injunction issue against said defendant corporation and the said Charles F. Morse, as acting president and sole managing director thereof, and each of the other officers and agents of said defendant corporation, made parties defendant herein, commanding them and each of them to refrain from putting into force the provisions of the said so-called act or any part thereof.

That the said Louis C. Boyle, as attorney general, be adjudged and decreed from attempting, as against said defendant corporation or any of its officers, agents, servants or employes, to enforce the provisions of the said so-called act or any part thereof. And also, that said order and injunction issue against the said Louis C. Boyle, as attorney general, commanding him to refrain from harassing and annoying, by prosecution or otherwise, under the provisions of the said so-called act, the defendant corporation, the said Charles F. Morse, or any of the other officers, servants, agents or employes of the said defendant corporation herein named.

That the final mandatory order and injunction of this court in this case issue, compelling said defendant corporation and the said Charles F. Morse and each of the other officers and agents of said defendant corporation herein named, to operate and maintain the said stock yards of the said defendant corporation in the state of Kansas as they are now operated and maintained, and that they exact and collect the

same charges for services performed and the same prices now demanded and received, wholly disregarding the said so-called act and all of the provisions thereof.

That a final order, judgment and decree issue that the said so-called act, approved March 3d, 1897, herein referred to as "Exhibit A" and made a part of this bill of complaint, is unconstitutional and void and of no validity, force or effect whatever; and that all of said defendants and each of them be enjoined from enforcing or attempting to enforce the said so-called act or any of the provisions thereof.

That a preliminary injunction may issue at once, upon the filing of this bill of complaint, against the said defendant corporation and each of its officers and agents named as defendants herein, during the pendency of this suit, strictly commanding and enjoining the said defendants and each of them, under the pains and penalties which may fall upon them and each of them in case of disobedience, that they forthwith and until the further order, judgment and decree of this court, desist from putting into force the said maximum rates, charges and prices specified in said so-called act aforesaid; and against the said Louis C. Boyle as attorney general, commanding and enjoining him to desist from enforcing or attempting to enforce the said so-called act against said defendant corporation and its officers and agents named as defendants herein, by arrest or otherwise, through the courts of the state or otherwise.

For in so much as your orator is without relief in a court of law, may it please this honorable court to grant unto your orator a writ of subpœna, to be directed to the Kansas City Stock Yards Company, a corporation, Charles F. Morse, as director, general manager, acting president and managing director of the said Kansas City Stock Yards Company; Harry P. Child, as the assistant general manager of the said corporation; Eugene Rust, as the general superintendent of the said corporation; Elliott E. Richardson, as the secretary of the said corporation; and Louis C. Boyle as attorney general of the state of Kansas, commanding them, and each of them, at a certain date and under the pain and penalty therein mentioned, personally to be and appear before this honorable court, then and there full and true, direct and perfect answers to make to all and singular the premises (but not under oath, answer under oath being hereby expressly waived); and further, to stand to and abide by such further order and direction herein as to this honorable court may seem just; and for such further and other order and direction herein as in equity and good conscience your orator may be entitled to, though not specifically prayed herein.

And your orator will ever pray.

FRANCIS LEE HIGGINSON,

WAGGENER, HORTON & ORR,
Solicitors for Complainant.

ALBERT H. HORTON, of Counsel.

United States of America, district of Kansas, ss.

In the circuit court of the United States for the district of Kansas, first division.

FRANCIS LEE HIGGINSON, *Complainant,*

against

KANSAS CITY STOCK YARDS COMPANY, a corporation, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, and LOUIS C. BOYLE as attorney-general of the state of Kansas, *Defendants.*

No. ——
In equity.

United States of America, district of Massachusetts, ss.

Francis Lee Higginson, of lawful age, being duly sworn, says: that he resides in Boston, in the state of Massachusetts and is a citizen of said state; that he is the complainant named in the foregoing bill of complaint; that this affiant has read said bill of complaint and knows the contents thereof and that the facts therein alleged are true; that the suit to be instituted by the filing of said bill is not a collusive one, nor is it filed in collusion with the defendants named therein or with any of them nor for the purpose of conferring upon said court, or any court of the United States, jurisdiction of a case of which it would not otherwise have jurisdiction; that on the 22d day of March, 1897, this affiant sent to the board of directors a communication, of which the following is a copy:

BOSTON, March 22, 1897.

To the Directors of the Kansas City Stock Yards Company:—

The undersigned, a stockholder of the Kansas City Stock Yards Company, owing and holding 296 shares of the capital stock, hereby calls your attention to an act recently passed by the Legislature of the State of Kansas, entitled "An Act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing restrictions in the trade of dead animals, and prescribing penalties for violations of this act," approved March 3d, 1897, which attempts to fix maximum rates to be charged by certain stock yards companies in that state for the yarding, driving, watering, weighing and feeding of live stock delivered to such yards and exposed for sale or feeding. This law applies to the Kansas City Stock Yards Company, and its operation will be most disastrous to its interests. I am informed and confidently believe that the result of an enforcement of the provisions of the law in question will be the reduction of the earnings of the company below the point at which the necessary operating expenses and a reasonable return to the stockholders can be realized.

I call your attention to several grave objections to this law:

1. The maximum charges prescribed by the law are unjust and unreasonable because they do not afford the company sufficient compensation to enable it to pay its necessary expenses of operation and a fair and reasonable return to its stockholders.

2. The law is not general and uniform in its operation throughout the state of Kansas, in that it does not include within its provisions all stock yards in that state doing business for the public.

3. The law is an attempted interference upon the part of the state of Kansas with Interstate Commerce.

4. The penalties provided by the law for its violation, by fine and imprisonment, are cruel and unusual.

There are many other serious objections to the law affecting its validity and legality, but those mentioned above justify me as a stockholder of the company in insisting that the directors should take some measure to effectually protect the interest of myself and the other stockholders of the company against the operation of said law.

I demand and insist that the company shall decline to put in force and operation the charges limited by said law, and that it by proper legal proceedings test the validity of the statute in the courts.

Respectfully, ——— ———

That on the same day he received from the Executive Committee of said Directors a reply of which the following is a copy:

BOSTON, March 22, 1897.

Mr. Francis Lee Higginson, Boston: DEAR SIR—Your communication to the directors of the Kansas City Stock Yards Company of this date, in which you insist and demand that the Company decline to put in force and operation the rates of charges fixed and limited by the recent Act of the Kansas Legislature, and that it test the validity of the Act by proper legal proceedings, was this day laid before the Executive Committee of this Company, which, after due consideration, passed the following vote:

"*Voted:* That the Chairman of this meeting be and he hereby is authorized to notify Mr. Francis Lee Higginson that his communication to the directors of date of March 22d, 1897, has been laid before the Executive Committee, and has been carefully considered; that while the directors are satisfied that the operation of the law in question would be most disastrous to the company, yet, in view of the severe penalties, by both fine and imprisonment, imposed for a violation of the law, they do not feel justified in complying with the request and demand of Mr. Higginson. Respectfully, N. THAYER, Chairman.

Francis Lee Higginson.

Subscribed and sworn to before me at my office in the City of Boston, Mass., this 22d day of March 1897. LOUIS A. FELIX,

[SEAL.] Notary Public.

"EXHIBIT A."

Committee Substitute for House Bill No. 87.

AN ACT

Defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing restrictions in the trade of dead animals, and prescribing penalties for violations of this act.

Be it enacted by the Legislature of the State of Kansas:

SECTION 1. Any stock yards within this state, into which live stock is received for the purpose of exposing or having the same exposed for sale or feeding, and doing business for a compensation, and which for the preceding twelve months shall have had an average daily receipt of not less than one hundred head of cattle, or three hundred head of hogs, or three hundred head of sheep, are hereby declared to be public stock yards.

SEC. 2. Any person, company or corporation owning or operating any such public stock yard or stock yards in this state is hereby declared to be a public stock yards operator, whether living or being within this state or not.

SEC. 3. Every such public stock yards operator or operators shall annually on the 31st day of December of each year, file with the secretary of state, an itemized statement certified and sworn to, setting forth the number of head of cattle, calves, sheep, hogs, horses and mules received in his or their public stock yards during the year next preceding.

SEC. 4. It shall be unlawful for the owners, proprietors, or the employes of the owners or proprietors of any such public stock yards within this state, to charge for driving, yarding, watering and weighing of stock, greater prices than the following, For driving, yarding, watering and weighing of cattle, 15 cents per head; calves 8 cents per head; hogs 6 cents per head; sheep 4 cents per head; and there shall be but one yardage charged.

SEC. 5. It shall be unlawful for the owner, owners or proprietors, or their employes, of any such stock yards within this state, to sell and deliver at the rate of less than two thousand pounds for a ton of hay, or any part thereof, the same to be of good quality, or to charge for or to sell the same at more than one hundred per cent. above the average market price, or value of such hay upon the markets of the towns or cities wherein such stock yards are located, upon the day preceding such sale and delivery; and it shall also be unlawful for any such owners, or proprietors, or employes, to sell and deliver less than seventy pounds of corn in the ear for a bushel, or less than fifty-six

pounds of shelled corn for a bushel, or to charge for or to sell the same at more than one hundred per cent. above the average market price or value of such ear corn or shelled corn on the markets of the towns or cities wherein such stock yards are located, on the day next preceding such sale and delivery. All feed not above named shall be sold for no greater per cent. of profit than hereinbefore provided.

SEC. 6. It shall be unlawful for the owners or proprietors of any stock yards to prohibit the owner or owners, or the representatives of any owner or owners of any dead stock in such yard or yards from selling such dead stock to any person or persons.

SEC. 7. That any person or persons violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined for the first offense not more than one hundred dollars, for the second offense not less than one hundred dollars nor more than two hundred dollars; and for the third offense not less than two hundred dollars nor more than five hundred dollars and by imprisonment in the county jail not exceeding six months for each offense; and for each subsequent offense he or they shall be fined in any sum not less than one thousand dollars and by imprisonment in the county jail not less than six months.

SEC. 8. It is hereby made the duty of the attorney general to prosecute all violations of the provisions of this act.

SEC. 9. All acts or parts of acts in conflict with this act are hereby repealed.

SEC. 10. This act shall take effect and be in force from and after its publication in the official state paper.

I hereby certify that the above bill originated in the House, and passed that body March 1st, 1897. W. D. STREET, Speaker of the House.
A. D. GILPIN, Chief Clerk of the House.

Passed the Senate March 2, 1897. A. M. HARVEY, President of the Senate.
M. WATSON, Secretary of the Senate.

Approved March 3, 1897.
J. W. LEEDY, Governor.

Endorsed: No. 7453. Francis Lee Higginson vs. Kansas City Stock Yards Company, *et al.* Bill of complaint. Filed Mch. 26, 1897. GEO. F. SHARITT, Clerk.

United States of America, district of Kansas, ss.

In the circuit court of the United States for the district of Kansas, first division.

FRANCIS LEE HIGGINSON, *Complainant*,

vs.

KANSAS CITY STOCK YARDS COMPANY, a corporation, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, and LOUIS C. BOYLE, as attorney general of the State of Kansas, *Defendants.*

No. 7453. In equity.

WHEREAS, Francis Lee Higginson has presented his bill of complaint and affidavit in the above entitled suit, wherein, among other things, he prays that the Kansas City Stock Yards Company, Charles F. Morse, as the general manager, acting president and sole managing director of said corporation, Harry P. Child, as assistant general manager of said corporation, Eugene Rust as general superintendent of said corporation, and Elliott E. Richardson, as secretary of said corporation, be commanded and enjoined and restrained from obeying and observing a so-called act of the legislature of the state of Kansas, approved March 3d, 1897, and known as "Committee Substitute for House Bill No. 87", entitled "An Act defining what shall constitute public stock yards, defining the duty of the person or persons operating the same, and regulating the charges thereof and removing restrictions in the trade of dead animals and prescribing penalties for the violation of this act," and from putting into force in the business of said defendant corporation the maximum rates, charges and prices specified in the so-called act aforesaid; and wherein, among other things, he prays that the said defendant Louis C. Boyle, as Attorney General of the state of Kansas, be enjoined and restrained from enforcing or attempting to enforce the said so-called act or any of the provisions thereof against the said defendant corporation, its officers, agents, servants and employes by arrest, criminal prosecution or otherwise, as more particularly shown in the bill of complaint herein; and that a final injunction issue commanding said defendant corporation and its officers and agents named as defendants herein to operate and maintain the said defendant corporation and the business thereof, as in said bill of complaint prayed.

NOW THEREFORE, IT IS ORDERED: That the said defendants and each of them show cause before this court at the city of Topeka, on Friday, April 2d, A. D. 1897, at two o'clock P. M. of said day, or as soon

thereafter as counsel can be heard, why the prayer of said bill of complaint for a preliminary injunction as therein prayed for should not be granted, and why the said defendants and each of them, their officers, assistants, agents, servants and employes should not be enjoined and restrained during the pendency of this suit, from obeying, observing and enforcing the provisions of the so-called act of the legislature of the state of Kansas herein referred to, and why the said complainant should not have the relief prayed for in said bill of complaint; that pending the hearing of this matter, the said defendant corporation and Charles F. Morse, as general manager, acting president and sole managing director of said defendant corporation, and the other officers and agents of said corporation named as defendants herein be and they are hereby ordered and restrained to desist and refrain from obeying, observing or putting into force in the operation of the said defendant corporation's business the maximum rates, charges and prices specified in said so-called act aforesaid; and the said Louis C. Boyle as attorney general of the state of Kansas is hereby ordered and restrained to desist and refrain from enforcing the provisions of said so-called act against the said defendant corporation, its officers, agents, servants and employes, and from arresting or criminally prosecuting in the courts of the state or otherwise the said defendant corporation, its officers, agents, servants and employes on account of any non-observance or disobedience of the said so-called act or any of its provisions, or on account of the failure to fully comply with the terms thereof.

Let a copy of this order, together with a copy of the bill of complaint herein, duly sworn to, be served upon the defendants forthwith.

March 26, 1897. CASSIUS G. FOSTER, Judge.

Endorsed: No. 7453. Restraining order. Filed March 26, 1897.
GEO. F. SHARITT, Clerk.

In the circuit court of the United States, for the district of Kansas, first division.

CHARLES U. COTTING, *Complainant*,
vs.
KANSAS CITY STOCK YARDS COMPANY, a corporation, et al., *Defendants*.
No. 7427. In equity.

FRANCIS LEE HIGGINSON, *Complainant*,
vs.
KANSAS CITY STOCK YARDS COMPANY, a corporation, et al., *Defendants*.
No. 7453. In equity.

JOURNAL ENTRY.

Now comes the said complainants, by their solicitors, Waggener, Horton & Orr, and the Kansas City Stock Yards Company, by its solicitor, I. P. Dana, and L. C. Boyle, as Attorney General, in person as well as by his solicitor, David Martin, and the other said defendants also appearing by their solicitor, I. P. Dana;

And thereupon, comes on for hearing the application of the complainants for the consolidation of said suits, and it appearing to the court that the causes are of like nature and relative to the same questions, it is ordered that the said causes shall be consolidated to be heard together and as one suit, so to avoid unnecessary costs in said suits and to prevent delay in the hearing thereof.

And thereupon, also comes on for hearing the motion of the complainants to amend their bills of complaint, as prayed for, which motions, upon due consideration thereof, are allowed, and the amendments ordered to be filed and made a part of the bills of complaint filed herein; the defendant, L. C. Boyle, as Attorney General, duly objecting and excepting to filing the amendments to the bills or either of them.

CASSIUS G. FOSTER, Judge.

Endorsed: Filed April 2, 1897. GEO. F. SHARITT, Clerk.

In the circuit court of the United States for the district of Kansas first division.

CHARLES U. COTTING, *Compainant*,
vs.
KANSAS CITY STOCK YARDS COMPANY, a corporation, *Defendants.* — No. 7427.

Cases consolidated.

FRANCIS LEE HIGGINSON, *Complainant*,
v.
KANSAS CITY STOCK-YARDS COMPANY, a corporation, et al., *Defendants.* — No. 7453.

This cause further coming on to be heard on the 3d day of April, 1897, upon motion of complainants for a preliminary injunction, the complainants appearing by their solicitors, Waggener, Hortor & Orr and D. R. Hite; L. C. Boyle, as Attorney General, appearing in person as well as by his solicitor, David Martin, and the Kansas City Stock Yards Company and the other defendants appearing by their solicitors, Pratt, Dana & Black; further hearing is had upon the objection of the defendant L. C. Boyle as Attorney General, to the hearing or receiving of any evidence on the part of the complainants in support of their motion for a preliminary injunction under the bills of complaint;

And thereupon, the court directed the said complainants to introduce and read their affidavits on file in said suits, in support of their motion for a preliminary injunction. The affidavits in behalf of the complainants were then duly offered and read as evidence in support of the motion of complainants for the preliminary injunction prayed for, (which affidavits, evidence and the rulings of the court permitting the same to be offered and read were duly objected and excepted to by L. C. Boyle, as Attorney General); and thereon, counsel for the respective parties having been heard, the motion of the complainants for a preliminary injunction, together with the affidavits and evidence submitted in support thereof, were taken under advisement by the court until Monday, April 12th, at ten o'clock A. M.

The above causes further coming on to be heard upon the motion of complainants for a preliminary injunction, as prayed for, the several parties thereto being present by their solicitors, as above stated, the court handed down its written opinion and decision upon certain matters involved in said suits, which it ordered to be filed.

The complainants duly excepted to the opinion, decision and rulings of the court as set forth in said written opinion aforesaid, that said act of March 3d, 1897, referred to in the bills of complaint filed herein is not class legislation, and is not special legislation; that the Kansas City Stock Yards is such a corporation as justifies the legislature in imposing rules and regulations for its government; that the said act of March 3d, 1897, is applicable to and may be enforced against the defendant stock yards company upon the ground that its business does not come under the designation of interstate commerce; that said act of the legislature is not contrary to or in conflict with the provisions of the Act of Congress of May 29th, 1894, entitled "An Act for the establishment of a bureau of animal industry, and to prevent the exportation of diseased cattle," and the amendments thereto, and the regulations of the Department of Agriculture promulgated thereunder.

L. C. Boyle, as Attorney General, also duly excepted to receiving any proof under the said bills, upon the ground that they present no cause of action; that no equity is alleged therein; and that he is improperly made a party thereto and asks leave to present testimony on his behalf in opposing a temporary injunction. It is thereupon ordered by the court in order that the court may have all the facts before it, so as to form an intelligent judgment as to whether the preliminary injunction prayed for by the complainants should be granted, that George W. Clark of Topeka, Kansas, be appointed special master, with power to take testimony and report the same with his findings to this court on or before June 1st, 1897, as to all matters and things in issue upon the hearing of the preliminary injunction prayed for, under the bills of complaint filed herein, including among other things, the cost of the Kansas City Stock Yards, the present value of the property of the Kansas City Stock Yards Company, the receipts and expenditures thereof, the manner of its operation, including its transportation of cattle and other stock from Kansas to Missouri and other states and from Missouri to Kansas and other states, and the handling of the same as interstate commerce (if any such interstate commerce is carried on by the defendant corporation) and such other matters as may be pertinent upon the hearing of the application for the temporary injunction prayed for, to which reference and the introduction of any evidence before the master under the bills of complaint filed herein, L. C. Boyle, as Attorney General, then and there duly excepted, and also to such reference the complainants then and there duly excepted, on the ground that upon the verified bills, affidavits and evidence already filed and presented to the court in support of the preliminary injunction aforesaid, the complainants are entitled to the granting of such preliminary injunc-

tion at once, and without any reference or further affidavits or evidence being introduced in support thereof.

The further hearing of the preliminary injunction prayed for is continued to Tuesday, the 1st day of June, 1897, at ten o'clock A. M.

CASSIUS G. FOSTER, Judge.

Endorsed: No. 7427 7453. Order. Filed Apl. 12, 1897.
GEO. F. SHARITT, Clerk.

In the United States Circuit Court,
District of Kansas.

CHARLES U. COTTING,
vs.
L. C. BOYLE, Attorney General, *et al.*

FRANCIS LEE HIGGINSON,
vs.
L. C. BOYLE, Attorney General, *et al.*

CASES CONSOLIDATED.

STIPULATION.

It is hereby stipulated by the parties hereto:

First: The defendant, Boyle, as attorney general, admits that there was no collusion between the complainant in the above entitled suits, and the defendant, The Kansas City Stock Yards Company, or any of its officers, directors or attorneys, solicitors or counsel in respect to the bringing or prosecution of the said bills or either of them, and that the said bills were not, when the same were exhibited, and are not collusive to confer upon a court of the United States, jurisdiction of the said causes.

Second: The defendants in the said bills shall on or before the 13th of Oct., '97, file their several answers responsive to the allegations of said bills, and on or before 15th Oct., '97, the plaintiffs shall file replications to said answers.

Third: The testimony taken by the respective parties before George W. Clark, special master in these cases, upon the reference to him, upon the motions of the plaintiffs for injunctions according to the prayer of said bills, together with the stipulations of the parties, the report of the said master and all exhibits, be taken and read in evidence upon the hearing of said causes with the same force and effect as if the same had been taken upon issues joined between parties upon the said bills, answers and replications, and the final hear-

ing of said causes shall commence at 2 o'clock on October 18, 1897, before Judge Foster and Judge Thayer, judges of said court, upon the pleadings, proofs, master's report and exhibits aforesaid, without further testimony from either party, and a decree be rendered thereon.

Fourth: The unsuccessful party on said hearing shall immediately take the necessary proceedings to appeal the said causes to the proper Court of Appeals and file the record therein, and both parties shall join in an application to the court to which the appeal shall be taken, to advance the causes upon the docket of said court, and as far as they are able to secure a speedy hearing of said appeal.

J. M. WOOLWORTH, and
WAGGENER, HORTON & ORR, and
D. R. HITE,
Solicitors for the Plaintiffs.

October 7th, 1897.

L. C. BOYLE,
Attorney General.
PRATT, DANA & BLACK,
Solicitors for Kansas City Stock Yards Co.

Endorsed: Filed Oct. 9, 1897. GEO. F. SHARITT, Clerk.

In the circuit court of the United States,
for the district of Kansas.

CHARLES U. COTTING, *Complainant,*
vs.
KANSAS CITY STOCK YARDS COMPANY,
CHARLES F. MORSE, *et al., Defendants.*
} No. 7227.

Now comes the complainant herein, by D. R. Hite and Waggener, Horton & Orr, his solicitors, and on motion it is ordered by the court, that the bill of complaint filed in this suit be and is now taken as confessed by defendants, The Kansas City Stock Yards Company, Charles F. Morse, Harry P. Child, Eugene Rust and Elliott E. Richardson.

To the Clerk of said Court: Enter the above in the order book in equity of said court.

D. R. HITE, and
WAGGENER, HORTON & ORR,
Solicitor for Complainant.

Endorsed: Filed Oct. 20, 1897. GEO. F. SHARITT, Clerk.

In the circuit court of the United States, for the district of Kansas.

FRANCES LEE HIGGINSON,
vs.
KANSAS CITY STOCK YARDS COMPANY, *et al.* } No. 7453.

Now comes the complainant herein, by Waggener, Horton & Orr, and D. R. Hite, his solicitors, and on motion it is ordered by the court, that the bill of complaint filed in this suit be and is now taken as confessed by defendants, The Kansas City Stock Yards Company, Charles F. Morse, Harry P. Child, Eugene Rust, and Elliott E Richardson.

To the Clerk of said Court: Enter the above in the order book in equity of said court.

D. R. HITE, and
WAGGENER, HORTON & ORR,
Solicitors for Complainant.

Endorsed: Filed Oct. 20, 1897. GEO. F. SHARITT, Clerk.

In the circuit court of the United States, for the district of Kansas, first division.

CHARLES U. COTTING, *Complainant*,
v.
KANSAS CITY STOCK YARDS COMPANY, a corporation, C. F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON and LOUIS C. BOYLE, as attorney general of the state of Kansas, *Defendants*. } No. 7427. In equity.

FRANCIS LEE HIGGINSON, *Complainant*,
v.
KANSAS CITY STOCK YARDS COMPANY, a corporation, C. F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON and LOUIS C. BOYLE, as attorney general of the state of Kansas, *Defendants*. } No. 7453. In equity.

DECREE PRO CONFESSO.

The above causes having been brought on for hearing, and it appearing that the defendants, the Kansas City Stock Yards Company, C. F. Morse, Harry P. Child, Eugene Rust and Elliott E. Richardson

"Where the term of office of a public officer, appellant in his official capacity, expires pending the appeal, his successor in office must be substituted as appellant."

Louisiana Mutual Life Ins. Co. v. Costa, 32 La. An. 1.

"A change in the incumbent of an office, pending a suit, does not abate the suit and make it necessary to begin *de novo*, if the successors are charged with the same duties."

McDuff v. Beauchamp, 50 Miss. 531.
Hardee v. Gibbs, Id. 802.

"A suit against the trustees of a school district to recover the teacher's wages does not abate, and is not discontinued by the expiration of the defendants' term of office, and the choice of other persons to succeed them."

Colegrove v. Breed, 2 Denio, 125.

"Where a decree is passed by the court below against an executor, being the defendant in a chancery suit, and, before an appeal is prayed, the executor is removed by a court of competent jurisdiction, and an administrator *de bonis non* with the will annexed is appointed, all further proceedings, either by execution or appeal, are irregular, until the administrator be made a party to the suit."

Taylor v. Savage, 42 U. S. (1 How.) 282; id., 43 U. S. (2 How.) 395.

"The resignation of an executor or administrator will not abate a suit then pending. If there

be more than one, the suit will proceed in the name of or against those remaining. If he is the sole representative of the estate, the suit will be revived in the name of his successor."

Elliott v. Eslava, 3 Ala. 568.

"An action brought by a general administrator, who afterwards resigns his office, may be revived in the name of his successor."

Russell v. Erwin, 41 Ala. 292.

"When a public administrator goes out of office, a suit brought by him does not, on that account, abate, but may be revived in the name of his successor, on proof of such succession, without *scire facias*."

Carley v. Barnes, 11 Ark. (6 Eng.) 291.

"A suit against the public administrator does not abate by his removal from office; but, on application by the plaintiff, the new administrator will be substituted in the place of the former one."

Burras v. Looker, 2 Edw. Ch. 499.

If this court shall be of opinion that A. A. Godard, as Attorney General of the State of Kansas, cannot be substituted as a party herein, then the court must necessarily decide that A. A. Godard, as such Attorney General, should look after this appeal against his office or in behalf of his office, and that the refusal of this court to substitute the new Attorney General in the place of Louis

C. Boyle does not have the effect to abate the appeal, nor cause its dismissal on motion. (*Railway v. Martin, as Treasurer*, 53 Ohio St. 386–402.) In such case, the action may proceed as commenced, but the new Attorney General must have exclusive control in behalf of his office.

III.

THE DECISIONS IN UNITED STATES v. BOUTWELL, 84 U. S. 604; THE WARNER VALLEY STOCK COMPANY v. SMITH, 165 U. S. 28, AND SIMILAR DECISIONS OF THIS COURT, HAVE NO APPLICATION TO THE PRESENT APPEAL.

There are many decisions of this court where a suit in equity has been brought against the Secretary of the Interior or some other official to compel the performance of an act which the law specially enjoins as a duty resulting from such office, trust or station, that the same abates upon the resignation of the office. See —

The Secretary v. McGarrahan, 9 Wall. 298.
United States v. Boutwell, 84 U. S. 604.
United States ex rel. Warden v. Chandler, 122 U. S. 643.
United States ex rel. Long v. Lochren, 164 U. S. 701.
Warner Valley Stock Company v. Smith, 165 U. S. 28.

But in our opinion, these decisions do not apply in the appeal pending.

"The office of a writ of mandamus is to compel the performance of a duty resting upon the person to whom the writ is sent. What the law regards, and what it seeks to enforce by a writ of mandamus, is the personal obligation of the individual to whom it addresses the writ. If he be

an officer, and the duty be an official one, still the writ is aimed exclusively against him as a person, and he only can be punished for disobedience."

U. S. v. Boutwell, supra.

In mandamus proceedings, a demand and refusal are prerequisites to the institution of the same.

Dobbs v. Stauffer, 24 Kan. 127.
State v. Karney, 3 Kan. 88.
Kendall v. Stokes, 3 How. (U. S.) 100.

A mandamus proceeding cannot be successfully maintained, unless the party defendant has refused to perform his duty,—has disobeyed a statute or order requiring the performance by him of some duty resulting from an office, trust or station.

In *United States v. Boutwell, supra*, as Secretary of the Treasury of the United States, Mr. Boutwell refused to pay an order drawn on the Treasury of the United States. It was alleged in that proceeding that he had disobeyed his duty; that he had refused to comply with the provisions of the statute; that he was a disobedient officer.

In *Warner Valley Stock Company v. Smith, supra*, this court said:

"The main object of the present bill was to compel the defendant Hoke Smith, as Secretary

of the Interior, to prepare patents to be issued to the plaintiff for the lands in question. The mandatory injunction prayed for was in effect equivalent to a writ of mandamus to him."

So, in that case, the proceedings were for the purpose of compelling Hoke Smith, Secretary of the Interior, to perform an official duty, alleging that he was a disobedient officer, and had refused to comply with certain statutes of the United States. In the Boutwell case, in the Hoke Smith case, and all other similar cases decided by this court, where it has been held that an abatement takes place by the expiration of the term of office, the proceedings have been against officers *whose alleged delinquency was personal.* Of course, in such cases, the expiration of the term of the officer would abate the proceeding, because it cannot be assumed that the successor would also be a disobedient officer and refuse to perform his duty. The successor of a disobedient officer "could not be brought into court in a mandamus proceeding against his predecessor, and be mulcted in costs, for the default of such predecessor without any delinquency of his own." Our motion does not present any question decided in the mandamus cases. Louis C. Boyle, as

Attorney General of the State of Kansas, was expressly charged by section 8 of the act of 1897, "to prosecute all violations of the provisions of said act." The suits commenced in the court below were not for the purpose of compelling Louis C. Boyle individually or as Attorney General of the State of Kansas to comply with the provisions of the act of 1897. No writ was prayed for by the appellants to compel Louis C. Boyle individually or as Attorney General to commence prosecutions under said chapter 240. On the other hand, it was alleged in the bills exhibited in the court below that Louis C. Boyle, as Attorney General of the State of Kansas, was specifically charged, by virtue of his office, with the administration of a State enactment, which it was alleged could not be enforced against the Kansas City Stock Yards Company, one of the appellees, without violating the constitutional rights of the appellants, stockholders in that corporation. If said chapter 240 is [redacted] constitutional, when attempted to be enforced as against the Kansas City Stock Yards Company, then the Attorney General of the State of Kansas, in prosecuting all violations of the provisions of that act against the Kansas City Stock Yards Company,

is in the due performance of his duty. Being obedient to that statute, he is expected to perform that duty. *The appellants have the right to have this court determine whether said chapter 240 is an unconstitutional enactment. If it is a constitutional enactment, A. A. Godard, as Attorney General of the State of Kansas, the successor of Louis C. Boyle, is also charged with the administration of the provisions of that enactment, and the affidavit on file in this court shows that the new Attorney General intends and proposes to act under the law of 1897 against the Kansas City Stock Yards Company. It would be a reflection upon A. A. Godard, as Attorney General of the State of Kansas, to intimate that he would not perform his official duty.*

Therefore, the bills were exhibited in the court below, not on account of any alleged delinquency personal to Louis C. Boyle. The question was, and also is with the new Attorney General, whether said chapter 240, as applied to the Kansas City Stock Yards Company, may be enforced by that officer,—not as an individual, but as an officer of the State of Kansas. As it was presumed in the court below that Louis C. Boyle, as Attorney General, would perform the duties imposed upon

him by said act, unless prevented from so doing by pending legal proceedings, or by the declaration of this court that said chapter cannot be enforced without violating the constitutional rights of the appellants, so, since A. A. Godard, as Attorney General of the State of Kansas, has succeeded to the office formerly possessed by Mr. Boyle, it must also be presumed that he will perform the duties imposed upon him by said act, unless prevented from so doing by the courts. The duties devolving upon Louis C. Boyle, as Attorney General of the State of Kansas, concerning said chapter 240, are the same duties devolving upon A. A. Godard, as Attorney General of the State of Kansas, the successor of Mr. Boyle. Boyle is out of office. He is no longer connected with this appeal, and therefore has no further standing in this court to appear in this motion or any other motion or hearing of this case.

In *Secretary v. McGarrahan*, 9 Wall. 298, after the official to whom the writ of mandamus was directed resigned, his successor was the person that came to this court and objected to being a party in that proceeding, and to being placed unwillingly in the position of an officer alleged to have been disobedient. If any objection can be

made to the motion to substitute the new Attorney General of the State of Kansas for the defunct official, that objection must come from A. A. Godard, the present Attorney General,—not from a defunct party,—one dead in law, who has no right to appear in this appeal in this court either personally or by counsel.

A. A. Godard, as Attorney General of the State of Kansas, has filed his appearance in the appeal, is present in court by his counsel, and he is the Attorney General that is to be heard in the present and future progress of this case. Mr. Boyle has retired from office. He is no longer interested in the appeal or any proceeding therewith connected. Therefore, if he appears or attempts to appear to this motion by counsel, brief or oral argument, we protest that he does so in violation of the rights of appellants and the rights of A. A. Godard, the present Attorney General of the State of Kansas, in violation of all precedent and without authority.

In *Railway v. Martin*, 53 Ohio State, 386, it was decided:

An action against a county treasurer for the purpose of enjoining the collection of taxes, is in its nature against the office, rather than against the person

filling such office. In case of a change of incumbent, the action may proceed as commenced, or the new treasurer may be substituted.

It was observed in that opinion that—

"The action in such cases is regarded as against the treasurer, whoever it may be. The new treasurer may, on motion, be substituted in the place of the retiring one. The treasurer in office should, as one of his official duties, take charge of and look after all actions against or in behalf of his office."

So, in this case, the Attorney General in office, A. A. Godard, should, as one of his official duties, take charge of and look after this appeal.

Again, as Louis C. Boyle is *functus officio*, he is, so far as this appeal is concerned, the same as if he were dead. He cannot be heard in this court upon this appeal. He cannot file any motion or brief. He is not permitted to appear here, to represent either of the appellees. Therefore, we believe that his successor, being charged with the duties of enforcing all of the statutes of the State of Kansas, and being expressly charged with the enforcement of the act of 1897 referred to, should be made a party herein.

2 Foster's Fed. Pr., § 482, pp. 1030–1034.

But further, if this court should decide that the retirement of Louis C. Boyle from the office of Attorney General, abates the appeal, and that A. A. Godard, as Attorney General of the State, cannot be made a party herein, or appear and argue this cause upon its merits, then this court must decide that the appellants, as stockholders of the Kansas City Stock Yards Company, have no legal rights which the courts are bound to respect, notwithstanding it should appear in this case upon argument that the decree of the Circuit Court of the United States for the District of Kansas was erroneous, and that the act of 1897 was unconstitutional. If the retirement from office by Louis C. Boyle on January 9th, 1899, abates the appeal, then his retirement from office immediately after the entry of the decree of October 28th, 1897, would have prevented an appeal, and, as before stated, if the resignation of the Attorney General of Kansas, every time a decree is entered in a suit brought to contest the constitutionality of the act of 1897, would abate the suit, the defeated complainant could never appeal to this court, or have the decree of the court below reviewed. This would be a denial not only of justice, but of the ordinary rights of

a suitor in court. If this appeal were dismissed, it would be insisted by opposing interest that the decree in the court below is *res adjudicata*, and therefore that the appellants can never be heard again in any court to contest the constitutionality of the act of 1897. Thus, without any fault of their own, they would be bound arbitrarily by the alleged erroneous decree, without any right to have the same re-examined or reviewed by the proper legal tribunal, simply because one of the appellees, being an officer, retires from his official position.

The appellants executed a bond for the benefit of the Attorney General of the State of Kansas, conditioned that they "shall prosecute said appeal to effect and answer all costs and damages if they fail to make their appeal good." The appeal has been properly taken, and is now pending in this court, and the appellants are ready "to prosecute said appeal to effect, and make their appeal good." But if the resignation or retirement of Louis C. Boyle from his office can defeat the appeal, then the appellants are helpless, and are required to pay large sums of money without being given an opportunity to prosecute their appeal. (Extracts, 72, 73.)

The final decree also provided —

"That in addition to the ordinary appeal bond, the Kansas City Stock Yards Company shall make and file in this court its bond in the penal sum of two hundred thousand dollars, payable to the clerk of this court and his successors in office, for the benefit of whom it may concern, conditioned that in the event the decree dismissing the bills is affirmed, it will, on demand, pay to the party or parties entitled thereto all overcharges for yarding and feeding live stock at its stock yards in Kansas City, Kansas, and Kansas City, Missouri, which it may have exacted in violation of sections 4 and 5 of the Kansas statute relative to stock yards, approved March 3, 1897, since an injunction was first awarded herein, to wit, on the 13th day of March, 1897, and that it will in like manner pay such overcharges, if any, as it may continue to exact in violation of said statute during the pendency of said appeal, — said obligation to be void if the statute in question shall be pronounced invalid by the Supreme Court of the United States." (Extracts, 56, 57.)

On October 28, 1897, the Kansas City Stock Yards Company gave the supersedeas bond of two hundred thousand dollars referred to in the decree. (Extracts, 71.)

If the resignation or retirement of an attorney general from his office shall prevent this court

from hearing this appeal when it is reached upon call, then the appellants will have no hearing upon the constitutionality of said act of 1897, and this court will have no opportunity to "pronounce invalid the statute in question." Can it be claimed that by reason of an attorney general resigning or retiring from office, and preventing the appellants from having this court determine the constitutionality of the statute in question, that the Stock Yards Company shall be mulcted in heavy damages, and pay large sums of money to various parties for alleged overcharges, when, if Mr. Boyle had continued in office, and this court upon the hearing of the merits of this appeal, had concurred in the opinion of counsel for the appellants that the Kansas act is unconstitutional, such bond of October 28th, 1897, would be void, and no liability accrue thereon? We think not.

We therefore contend that the motion presented by us should be allowed, and that the appellants may be permitted to prosecute their appeal to effect.

Sufficient extracts from the transcript of the

record have been printed and are now on file with the clerk of this court, to enable this court to act understandingly upon our motion, without refering to the original record.

B. P. WAGGENER AND
ALBERT H. HORTON,

Attorneys for Charles U. Cotting and Francis Lee Higginson, Appellants.

No. 237. 448 S.

JAN 19 1899
JAMES H. McKENNEY,

Brief of Waggener & Horton for
Appellants Cotting & Higginson (on mtg. to abate)

Supreme Court of the United States.

Filed Jan. 19, 1899.

CHARLES U. COTTING, *Appellant*,

vs.

THE KANSAS CITY STOCK YARDS COMPANY, a Corporation, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, and LOUIS C. BOYLE, as Attorney-General of the State of Kansas, *Appellees*. } In Equity.

No. 237, October Term, 1898.

FRANCIS LEE HIGGINSON, *Appellant*,

vs.

THE KANSAS CITY STOCK YARDS COMPANY, a Corporation, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, and LOUIS C. BOYLE, as Attorney-General of the State of Kansas, *Appellees*. } In Equity.

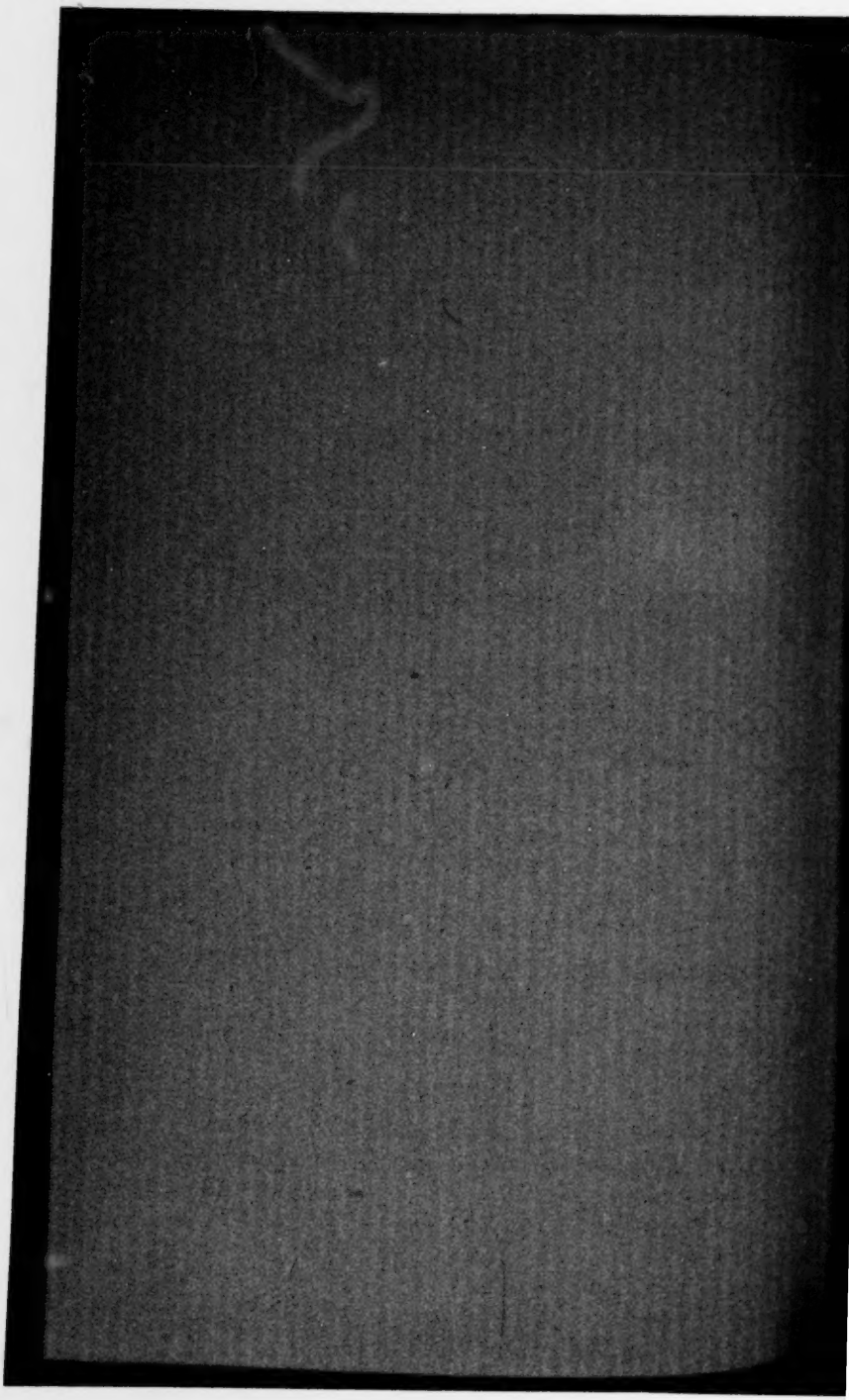
(Causes 7427 and 7433. U. S. C. C. Dist. of Kansas, First Division,—Consolidated.)

APPELLANTS' BRIEF,

IN ANSWER TO THE MOTION AND BRIEF OF LOUIS C. BOYLE TO ABATE THE SUITS.

B. P. WAGGENER AND
ALBERT H. HORTON,
Counsel for Charles U. Cotting and Francis Lee Higginson, Appellants.

BYRON S. ADAMS, PRINTER.



IN THE

Supreme Court of the United States.

CHARLES U. COTTING, *Appellant*, *vs.* THE KANSAS CITY STOCK YARDS COMPANY, a Corporation, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, and LOUIS C. BOYLE, as Atttorney-General of the State of Kansas, *Appellees.*	In Equity. No. 237, October Term, 1898.
FRANCIS LEE HIGGINSON, *Appellant*, *vs.* THE KANSAS CITY STOCK YARDS COMPANY, a Corporation, CHARLES F. MORSE, HARRY P. CHILD, EUGENE RUST, ELLIOTT E. RICHARDSON, and LOUIS C. BOYLE, as Attorney-General of the State of Kansas, *Appellees.*	In Equity.

(Causes 7427 and 7453, U. S. C. C. Dist. of Kansas, First Division,—Consolidated.)

APPELLANTS' BRIEF,

IN ANSWER TO THE MOTION AND BRIEF OF LOUIS C. BOYLE TO ABATE THE SUITS.

I.

STATEMENT.

On Monday, January 16, 1899, with the consent of A. A. Godard, as Attorney-General of the State of Kansas, and of all other parties interested, there was submitted to this Court the motion of the appellants to have Hon. A. A.

Godard, as Attorney-General of the State of Kansas and the successor of Louis C. Boyle, substituted as a party in the place of Louis C. Boyle, the former Attorney-General of said State.

On January 17, 1899, Louis C. Boyle, in his individual capacity, submitted to this Court his motion to abate and dismiss the appeal pending in this Court. This appeal is being prosecuted by Cotting and Higginson, complainants below.

The brief which we filed in support of our motion for Hon. A. A. Godard, as Attorney-General of the State of Kansas, to be substituted in the place of Louis C. Boyle, the former Attorney-General of said State, or to have the appeal proceed through all its stages in this Court on the part of the office of the Attorney-General of the State of Kansas in the same manner in which it was commenced, but under the charge and control of Hon. A. A. Godard, the present Attorney-General of said State, is a full and sufficient answer to the brief of Louis C. Boyle, filed in support of his motion to abate the suits and to dismiss the appeal. But we now add a few additional remarks.

It appears from the affidavit of Louis C. Boyle, on pages 8 and 9 of his brief, that on January 9, 1899, Hon. A. A. Godard became and is now the duly-qualified and acting Attorney-General of the State of Kansas, and that on said January 9th, Mr. Boyle retired from the office of Attorney-General of the State of Kansas and " is not now the Attorney-General of the State of Kansas either *de jure* or *de facto*, but that Hon. A. A. Godard is the Attorney-General of the State of Kansas *de jure* and is duly acting as such officer."

It also appears from the motion of Louis C. Boyle to abate the suits, and from his brief filed in support thereof, that the signature thereto is " L. C. Boyle," not the Attorney-General of the State of Kansas. On the cover of his

brief the names are "David Martin, L. C. Boyle." His brief is signed "L. C. Boyle, David Martin of Counsel." Neither the motion to abate, nor the brief filed in support thereof purports to be made by any officer of the State of Kansas, nor any one connected with the office of the Attorney-General, and it is expressely shown that the motion and brief are not filed "in behalf of the office of the Attorney-General of the State of Kansas." Mr. Boyle in his individual capacity, and not as Attorney-General, comes into this Court after he has retired from office, and, without the consent of the present Attorney-General of the State of Kansas, and prays this Court to abate the suits and dismiss the appeal solely on account of his retirement from his office.

II.

AS HON. A. A. GODARD, THE PRESENT ATTORNEY-GENERAL OF THE STATE OF KANSAS, AND THE SUCCESSOR OF LOUIS C. BOYLE, IS CHARGED WITH THE SAME DUTIES UNDER THE KANSAS ACT OF MARCH 3, 1897, COMPLAINED OF BY THE APPELLANTS, A CHANGE IN THE INCUMBENT OF THE OFFICE OF ATTORNEY-GENERAL, FROM BOYLE TO GODARD, PENDING THE APPEAL IN THIS COURT, DOES NOT ABATE THE SUITS OR APPEAL.

We have referred in our brief upon our motion for substitution to the cases of *Bowden vs. Johnson*, 107 U. S., 251-264; *Thompson vs. The United States*, 103 U. S. (13 Otto.), 480-484; *Gates vs. Goodloe*, 101 U. S., 612, and other similar ones. See, also, Sec. 954 *et sub.* Rev. Stat. (2 Ed.) 1878.

The decisions cited in our brief upon our motion, as we understand, clearly decided that where the successor of an officer is charged by the statute with the same duties, a change in the incumbent of the office pending the suit does not abate the suit or make it necessary to begin *de novo*.

It was observed in *McDuff vs. Beauchamp*, 50 Miss., 531-537, "that it was insisted that the suit abated by the expiration of Howard's term of office and that it was error to substitute Beauchamp his successor."

* * * * * * *

"We know of no statute applicable to this state of facts. We believe, however, that the practice has long prevailed in this State to allow a successor in office to prosecute a suit instituted by his predecessor."

In *Railway vs. Martin*, 53 Ohio State, 386–402, cited in our brief upon our motion to substitute, it was remarked "the action was commenced against John R. Martin, then County Treasurer, and before the case came into the Circuit Court or this Court, his term of office had expired and his successor had been elected and qualified and had been inducted into office. The question is, that the proceedings in error in the Circuit Court and in this Court, should have been against the successor and not against John R. Martin, who was no longer Treasurer. The point is not well taken.

The action in such cases is regarded as against the Treasurer, whoever he may be, and it may proceed through all its stages in all courts in the same manner in which it was commenced, or if desired, the new Treasurer may on motion be substituted in the place of the retiring one and this is certainly the better practice.

The Treasurer in office should, as one of his official duties, take charge of and look after the actions against or in behalf of his office, but a failure to substitute the new Treasurer does not have the effect to abate the action nor cause its dismissal on motion."

Louis C. Boyle has no interest whatever in the pending suit or appeal. He is out of office. The suits filed in the Court below were against him as Attorney General of the State of Kansas, *not individually or for any personal delin-*

quency. (Extracts, pp. 3-24.) (Extracts, pp. 26-47.) The Kansas Act of March 3, 1897, complained of, will be found on pages 22-23 and 46-47 of Extracts.

It is not correct, as alleged in the brief of Louis C. Boyle, that he has any interest in the suits or appeal by reason of the costs taxed therein. All costs in the Court below have been paid and all costs in this Court have been advanced by the appellants. The judgment for costs was not in favor of Louis C. Boyle personally, but as Attorney-General of the State of Kansas; as before stated, all of these costs have been satisfied.

Really, the contention in this Court, by Mr. Boyle, is as to who shall control, in behalf of the office of Attorney-General of the State of Kansas, the defence to the appeal of the appellants. Louis C. Boyle is out of office and has no right or authority to look after this appeal in behalf of the Attorney-General's office. It is the duty of the Hon. A. A. Godard, as Attorney-General of said State, to look after, on behalf of his office, this appeal, and to take exclusive charge and control thereof. Louis C. Boyle is a stranger now to this appeal and the proceedings pending in this Court. We contend he has no authority, as he is out of office and has no interest in the suits or appeal, to file in this Court any motion or brief, or to appear further in this matter. We believe we have a right to have his motion to abate and his brief filed in support thereof stricken from the files of this Court.

In our view, L. C. Boyle, being out of office and having no interest in the suits or appeal, has no further standing in this Court to make any motion in the present or future progress of this case. Indeed, as he signs his name individually at the end of his brief, it is apparent that he does not claim to appear for the office of Attorney-General of the State of Kansas, nor for any party or officer interested in

the suits or the appeal. Therefore, we contend, that Hon. A. A. Godard, as Attorney-General of the State of Kansas, ought to be made a party to this appeal, and whether made such a party or not, that in order the appellants may understand the present status of all the appellees, this Court should declare who has the right to represent and appear for the office of Attorney-General of the State of Kansas, and, also, that this Court should declare that Hon. A. A. Godard, as such Attorney-General has, in behalf of his office, the exclusive charge and control of said suits and the appeal.

We remind the Court that Hon. A. A. Godard was present by his counsel, Ex-Judge D. M. Valentine, when the motion to substitute was submitted to the Court, and that he stated to this Court that the Attorney-General desired a hearing and decision of the appeal upon the merits. This was in effect a withdrawal of Mr. Boyle's motion to abate, if the present Attorney-General of Kansas has the power to appear in this appeal in behalf of his office. The office of the Attorney-General of the State of Kansas, the shippers and stock-raisers in that State are interested in having the law questions involved in this appeal decided. The appellants, having vast property rights involved in this appeal, are also interested in having a full hearing of the appeal on the merits thereof. No person, party or officer having any interest in the appeal desires an abatement thereof. But Mr. Boyle, being out of office, wants the appeal abated or dismissed for some whim or caprice of his own. Ex-Judge Valentine also stated that after these motions were decided he wanted the appeal continued over the term. We agreed to this. If this Court shall decide that Hon. A. A. Godard, as Attorney-General of the State of Kansas, shall be substituted in the place of Louis C. Boyle, the old Attorney-General, or if Hon. A. A. Godard,

as Attorney-General of the State of Kansas, shall be held by this Court as the officer having charge and control, in behalf of his office, of the defense to the appeal and contention of appellants, then the appeal is to be continued over this October term of Court and until the next term thereof.

In any event, owing to the late submission of the various motions now before the Court for decision and the near approach of the call upon the docket of this appeal, the parties interested prefer for their convenience and a proper preparation for the hearing, a continuance of the appeal after such motions are passed upon.

B. P. WAGGENER AND
ALBERT H. HORTON,
Attorneys for Charles U. Cotting and Francis Lee Higginson, Appellants.

11

No. 43

Brief of Waggoner

Appts.

Office Supreme Court U. S.
FILED
OCT 7 1899
JAMES H. MCKENNEY
Clerk.

Filed Oct. 7, 1899.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

CHARLES U. COTTING AND FRANCIS LEE HIGGINSON, *Appellants*,
vs.
A. A. GODARD, AS ATTORNEY-GENERAL OF THE STATE OF KANSAS, AND THE KANSAS CITY STOCK YARDS COMPANY, *et al.*, *Appellees*.
No. 43.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

STATEMENT OF CASE, BRIEF, AND ARGUMENT FOR APPELLANTS.

B. P. WAGGENER AND
ALBERT H. HORTON,
Of Counsel for Appellants.

CRANE & CO., TOPEKA.

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(The pages of the printed record are indicated by Roman figures, and the pages of the original record on file by Arabic figures.)

STATEMENT OF CASE.

This is an appeal by the complainants from a decree of the Circuit Court of the United States for the District of Kansas, rendered on October 28, 1897, dismissing the bills of complainants, who are stockholders of the Kansas City Stock Yards Company. They sued on behalf of themselves and all other stockholders to perpetually enjoin the Attorney-General of the

State of Kansas from enforcing against the Kansas City Stock Yards Company, its officers and employés, by criminal prosecution or otherwise, an act of the Legislature of the State of Kansas approved March 3, 1897, known as "Committee Substitute for House Bill No. 87," and being "An Act defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing the restrictions in the trade of dead animals, and prescribing penalties for violations of this act." (Record, 18-20, 41-42.) A copy of the act is hereto attached, marked "Exhibit A." This is published in the Session Laws of Kansas for 1897 as chapter 240. *Under section 8 of said act, the Attorney-General of Kansas is charged with the special duty of enforcing the provisions of said act, as follows: "It is hereby made the duty of the Attorney-General to prosecute all violations of this act."*

The bill of Charles U. Cotting was filed on March 13, 1897. (R. 1-20.)

The bill of Francis Lee Higginson was filed March 26, 1897. (R. 23-42.)

The bills alleged that the act of March 3d, 1897, relating to stock yards, is repugnant to the Fourteenth Constitutional Amendment, as depriving the Stock Yards Company of its property without due process of law, and denying to it the equal protection of the law, and to section 8, article 1 of the Constitution of the United States, ordaining that Congress shall have power to regulate commerce among the several States, and the

provisions of the acts of Congress establishing a bureau of animal industry, and the various rules and regulations of the Department of Agriculture made and promulgated in accordance with the provisions of acts of Congress.

At the time of filing the bills, the court granted orders that the defendant corporation and its officers and agents be temporarily restrained from obeying, observing or putting into force the maximum rates and prices specified in the act of March 3, 1897; and Louis C. Boyle, as Attorney-General of the State of Kansas, was also restrained from enforcing the provisions of said act against the said defendant corporation, its officers, servants and employés, and from arresting or criminally prosecuting in the courts of the State or otherwise the said defendant corporation, its officers, servants and employés, on account of any non-observance or disobedience by them of the said act or any of the provisions thereof. (R. 22-23, 43-44.)

The suits were consolidated on April 2, 1897. (R. 50-51.)

On April 12, 1897, George W. Clark, of Topeka, Kansas, was appointed Special Master, with power to take and report the testimony for the hearing of the application for a preliminary injunction. (R. 52-53.)

See *Cotting v. Kansas City Stock Yards Co. et al.*, 79 Fed. 679-684.

On July 21, 1897, the order of the court theretofore granted, "restraining and enjoining the Kansas City Stock Yards Company, its officers and agents, from putting into force the charges and rates prescribed by the act of the Legislature of the State of Kansas approved March 3, 1897, relating to stock yards, and

also restraining and enjoining L. C. Boyle, as Attorney-General of the State of Kansas, from enforcing the provisions of said act against the Kansas City Stock Yards Company, its officers and agents," was continued in full force, pending further proceedings in the court. (R. 53-54.)

The Kansas City Stock Yards Company, of which Cotting and Higginson are, with many others, stockholders, filed its charter in the office of the Secretary of State of the State of Kansas, on December 10, 1883. (R. 61-62, *1557-8.*) The purposes for which the corporation was formed were, "the construction, maintenance and operation of union stock yards, and of such buildings, hotels, railways and switches as might be necessary for such purpose." (R. 59.) The county of Wyandotte in the State of Kansas, and the county of Jackson in the State of Missouri, were designated in the charter as the places where the business of the corporation was to be transacted. A copy of which charter is hereto attached, marked "Exhibit B." For the sake of brevity, the Kansas City Stock Yards Company will be called the Stock Yards Company. At the time of filing its charter, the amount of capital stock of the corporation was $2,500,000, the shares of stock being twenty-five thousand, of the par value of $100 each. (R. 61-62.) The corporation commenced active operations on January 1, 1884. It then acquired and purchased property, tangible and intangible, of the actual value in money of $1,990,000, and issued therefor 19,900 shares of its capital stock, of the par value of $100 each. (R. 212, 216, 230-231.) The stock issued was quoted in the

stock markets of Boston, Mass., and Kansas City, Mo., at that time above par.

Subsequently the corporation increased its capital stock, as authorized by the statutes of Kansas, to $7,500,000, and certificates thereof were properly filed in the office of the Secretary of State of Kansas on July 22, 1887, and on February 16, 1894. (R. 61-62.) See Exhibits "C" and "D."

On December 31, 1896, there had been issued capital stock then and now outstanding to the amount, at par value, of $7,368,650. The market quotations of the stock of the corporation in Boston, Mass., and in Kansas City, Mo., ranged in the years 1896 and 1897, prior to March of that year, from $131 to $141. (R. 62.)

The Stock Yards Company is a private corporation. In Kansas, corporations are created only under general laws. The Legislature cannot pass any special act conferring corporate powers. (Art. 12, Constitution of Kansas.) When the Stock Yards Company was incorporated, and at the time of the trial, any voluntary association of five or more persons could be incorporated by filing a charter in the office of the Secretary of State of the State of Kansas, and paying $2 for recording the same, for the purpose of constructing, maintaining and operating stock yards, and the erection of such buildings, hotels, railways and switches as might be necessary for that purpose. (Chap. 23, Vol. 1, Gen. Stat. of Kan. of 1889, concerning private corporations, pp. 367-371; chap. 66, Vol. 1, Gen. Stat. of Kan. of 1897, pp. 688-692.) The existence of the corporation

dates from the time of the filing of its charter. (Par. 1166, Vol. 1, Gen. Stat. of Kan. 1889, p. 371; sec. 12, chap. 66, Vol. 1, Gen. Stat. of Kan. of 1897, p. 692.)

The company has no legal monopoly, no power to exercise the right of eminent domain, no special privileges conferred by the State. The business is open to all comers. The State has simply authorized the company to transact the business described in its charter. That and nothing more.

Charles U. Cotting, one of the complainants, at the time of filing his bill, and prior thereto, was a stockholder in the corporation, owning 250 shares of stock. Francis Lee Higginson, another complainant, at the time of filing his bill was a stockholder, owning 296 shares of stock. The largest part of the earnings of the corporation in 1896 was derived from the per-capita charges upon live stock sold in the yards, which were as follows: Cattle, twenty-five cents; calves, ten cents; hogs, eight cents; and sheep, five cents. These charges are identical with those which prevail at the yards at St. Louis, East St. Louis, Omaha, Denver, Pueblo, Cincinnati, and Sioux City; and about the same as at Chicago, Fort Worth, St. Paul, Louisville and Indianapolis. Feed is sold at substantially the same prices in all other stock yards in the country. All of these stock yards are operated in the same manner as those at Kansas City, and there is and has been for a long time an active and growing competition among their owners to attract and secure to each the shipment of live stock from competitive territory.

Finding No. 39, Report of Master. (R. 74.)

No yardage charge is made unless the stock is sold in the yards, and no matter how often the stock may change, or how long it may remain in the yards, there is but one yardage charge.

Finding No. 18, Report of Master. (R. 64.)

For the per-capita charge stated, the company furnishes whatever yard or pen space is required by the owner to exhibit his stock to the best advantage for sale, he having the privilege of dividing a car-load into as many different lots and using as many pens as he desires. It furnishes standard scales, upon which it weighs the live stock in the yards whenever and in such quantities as the owners desire. In 1896 there was an average of more than 500 drafts of live stock in each day. It records all transfers from seller to buyer, and gives certificates of weights upon which all sales are settled.

Finding No. 19, Report of Master. (R. 65.)

The company includes in its yardage charges facilities for the dipping of sheep, as all sheep pass through a disinfecting appliance known as a sheep-dip, in accordance with the rules of the Department of Agriculture.

The company also furnishes to shippers and owners of stock in its yards a valuable public market for the exposure of live stock for sale.

Speaking generally, the word yardage includes all services from the time the stock is unloaded to the time it is sold or reshipped, including driving, yarding, watering, weighing (in case the stock is sold), and responsibility for safety, the privilege of the market in the yards, and other valuable services.

Another source of income is the sale of feed, including the services performed by the company in connection therewith. For the convenience of owners of stock, the company keeps on hand large stores of hay and grain. These stores are all maintained in Missouri, where they are sold upon the written order of such owner, and where they are paid for by him. Upon the receipt of his order, hay and grain called for thereby is delivered by the company's employés from its stores to the pens where such owner's stock is yarded. The amount so called for being inconsiderable for each head of stock, exact accounts are necessarily kept by the company of all of these small orders, and the care and labor of distributing the feed is very large. All these services are included in the charges for the hay and grain.

Findings Nos. 20 and 21, Report of Master. (R. 65.)

The charge for such feed and the services connected therewith is $1 per cwt. for hay, and $1 per bushel for corn. The charge for feed, water and services is identical with that made in the stock yards at Omaha, St. Louis, East St. Louis, and Denver. At Pueblo, Chicago and St. Louis the charge at the stock yards for timothy hay is $1.50 per cwt.

Finding No. 20, Report of Master. (R. 65.)

The act of March 3d, 1897, provides:

"SEC. 4. It shall be unlawful for the owners, proprietors, or the employés of the owners or proprietors of any such public stock yards within this State, to charge for driving, yarding, watering and weighing of stock, greater prices than the following: For driving, yarding, watering and weighing of cattle, fifteen cents per head; calves, eight cents per head; hogs, six

cents per head; sheep, four cents per head; and there shall be but one yardage charged.

"SEC. 5. It shall be unlawful for the owner, owners, proprietors, or their employés, of any such stock yards within this State, to sell and deliver at the rate of less than two thousand pounds for a ton of hay, or any part thereof, the same to be of good quality, or to charge for or to sell the same at more than one hundred per cent. above the average market price or value of such hay upon the markets of the towns or cities wherein such stock yards are located, upon the day preceding such sale and delivery; and it shall also be unlawful for any such owners, or proprietors or employés, to sell and deliver less than seventy pounds of corn in the ear for a bushel, or less than fifty-six pounds of shelled corn for a bushel, or to charge for or to sell the same at more than one hundred per cent. above the average market price or value of such ear corn or shelled corn on the markets of the towns or cities wherein said stock yards are located, on the day next preceding such sale and delivery. All feed not above named shall be sold for no greater per cent. of profit than hereinbefore provided."

The act reduces the charge for yardage and all the services connected therewith from 25 cents to 15 cents per head of cattle, from 10 cents to 8 cents per head of calves, from 8 cents to 6 cents per head of hogs, and from 5 cents to 4 cents per head of sheep; and for feed from $1 per bushel for corn to 40 cents, and from $1 per cwt. of hay to 70 cents. These reductions amount to over $300,000 per annum.

It appears from the testimony and the report of the Master that the shipments of live stock received at these yards originate from various States and Territories. The following tabulated statement gives complete information of the sources and the numbers of stock received at the yards during the year 1896:

State or Territory.	*Cattle.*	*Calves.*	*Hogs.*	*Sheep.*	*Horses and Mules.*	*Total.*
Kansas	863,430	33,133	1,625,848	294,997	32,188	2,849,596
Texas.....	217,257	19,036	12,842	145,555	45	394,735
Missouri	204,271	6,908	667,248	109,521	20,525	1,008,473
Indian Ty.....	188,918	20,247	68,375	2,994	27	280,511
Oklahoma.....	78,720	6,673	87,579	5,769	122	178,863
Colorado.....	44,746	2,737	582	90,866	782	139,715
New Mexico ..	35,876	2,988	494	88,941	.....	128,299
Nebraska	28,178	1,023	136,394	31,527	1,863	198,985
Iowa.....	11,451	2,651	232	49	590	14,973
Minnesota	9,909	2,879	42	.....	2	12,832
Old Mexico ...	6,512	.....	.....	3,120	.....	9,632
Utah.....	5,552	15	.....	162,531	176	168,274
Arkansas.....	4,327	984	5,143	4,117	1	14,572
Idaho.....	4,304	151	490	6,910	99	11,954
Arizona.....	2,808	.....	.....	33,638	65	36,511
Wyoming	2,077	252	.....	3,479	641	6,429
Oregon.....	1,410	1	.....	7,350	293	9,234
Illinois	694	11	.....	63	56	824
Montana	491	.....	.....	.....	91	582
California.....	293	.....	.....	225	29	547
Wisconsin	3,306	497	308	1,344	252	5,705
Total.....	1,714,532	100,168	2,605,575	993,126	54,847	5,471,246

—(R. 863.)

Finding No. 4, Report of Master. (R. 60.)

The Stock Yards Company, since it became the owner of its yards, has secured to locate in the immediate vicinity of its yards, by its energetic, persistent and continued efforts, and the payment of $697,377.10, great beef, pork and mutton packing establishments, with a large capacity for the slaughtering of live stock, amounting in 1896 to 894,537 cattle, 58,331 calves, 2,263,143 hogs and 685,727 sheep, aggregating 3,896,738 head of stock.

Finding No. 5, Report of Master. (R. 60-61.)

If the live stock shipped from the State of Kansas to, and sold on the Kansas City stock yards market during the year 1896 had been shipped by the owners thereof to Chicago, and

sold there, such owners would have realized from the sale of such live stock $1,500,000 less than they actually did receive by selling the live stock at the market furnished at the Kansas City stock yards by that company.

Finding No. 39, Report of Master. (R. 74.)

The salaries paid annually to the officers of the Stock Yards Company are as follows:

President	$2,500
Vice-President and General Manager	10,000
Assistant General Manager	5,400
Treasurer	5,000
General Superintendent	5,000
Attorneys	3,250
Cashier	2,700
Superintendent of Construction	2,000
Total	$35,850

—(R. 813.)

The Master reported, "for the services rendered by the officers, employés and servants of the Stock Yards Company, considering their skill, ability, energy and fitness for the performance of such services, the compensation paid to them by the company is and has been fair and reasonable." (R. 74.)

The Master also reported that "the affairs of said company have, from the standpoint of the stockholders therein, been wisely, efficiently and economically administered, and its operating expenses and cost of maintenance have been necessary to properly transact its business and successfully carry out the purposes for which it was incorporated." (R. 74.)

The only criticism the Master made of the management of the company were the expenditures in the purchase of seven small tracts of land, designated on "Exhibit Z" as "e," and for lands and improvements in the horse and mule department. Yet the uncontradicted testimony shows that the purchase by the company of the small tracts of land was in the opinion of those most competent to judge a wise provision for the establishment of closer business connections with the largest patron of the Stock Yards Company, and for the purpose of establishing more expeditious facilities for the rapid and convenient handling of stock received at the stock yards over the Union Pacific and Missouri Pacific railroads. It also appears from the undisputed testimony that the horse and mule department was an absolutely essential part of said business from the necessities of stock-raisers and the competition of other stock yards. (R. 74, 846-847.)

No more was expended upon the horse and mule department than was reasonably necessary therefor. (R. 847.)

Geographically, the stock yards are situated partially upon a peninsula formed by the confluence of the Kansas and Missouri rivers, and on the east and west banks of the Kansas in Wyandotte county, Kansas, and south of the Missouri, in Jackson county, Missouri. The stock yards are divided into several divisions. On the west bank of the Kansas river is the quarantine or southern-cattle division, consisting of about twenty acres, divided into cattle-pens. This is the portion of the yards devoted to the handling of stock originating south of the south

line of Kansas. It is called the quarantine division because all cattle from that region are, under the acts of Congress and the regulations of the Department of Agriculture, subjected to inspection and quarantine as hereafter explained. Practically, all of the remaining portions of the yards are on the east bank of the Kansas. Directly across the river from the quarantine division is that part of the yards known as the main yards, consisting of about eighty-two acres, approximately sixty-five of which are devoted to the care of live stock, principally cattle; the remaining area being used for shipping facilities, the horse and mule department, the storage of feed, and general office buildings and similar conveniences. These eighty-two acres lie in almost equal proportions in the States of Kansas and Missouri; the jurisdictional line between the two States almost exactly dividing these yards. The office building known as the Stock Exchange Building is partly in Missouri and partly in Kansas. The half of the main yards which is situated in Missouri is devoted by the Stock Yards Company to the handling of cattle, the storage and sale of feed, the care and handling of horses and mules, and the shipment of live stock sold at the yards to points in other States. The half of the main yards which is in Kansas is devoted largely to the unloading of live stock received at the yards, and to the yarding and weighing of cattle and hogs. It is separated by the terminal yards of the Missouri Pacific and Union Pacific railroads, from the sheep and hog division; which consists of about thirty-two acres, upon which are pens for hogs and sheep. The relative capacity of

the departments of the yards is shown by the receipts of cattle during the year 1896. In that year, in the quarantine division about 300,000 head of cattle were cared for; in the Kansas portion of the main yards, about 500,000 head were yarded; and the remainder, about 900,000 head, were yarded in the portion of the main yards situated in the State of Missouri. In addition to the cattle referred to, aggregating in round numbers 1,700,000, there were also yarded nearly 4,000,000 of horses, mules, calves, hogs, and sheep.

For the purpose of facilitating the rapid handling of live stock, the Stock Yards Company has, within the limits of its property, ten standard-gauge railroad tracks, connected outside of the yards at a point within the State of Missouri with the tracks of eleven different railroad companies. The railroad tracks constructed and owned by the Stock Yards Company are conveniently situated with reference to its unloading-chutes. The Stock Yards Company has no motive power; the railroad companies running their trains, engines and cars over the tracks in the yards. All of the departments are equipped with suitable structures for the sale of live stock, and for its movement to convenient places of sale, and for its rapid disposition after sale. These structures consist of pens, alleys, viaducts, tunnels, and a steel stock bridge spanning the Kansas river. The viaducts are overhead driveways, and with their various ramifications are about two and one-half miles in aggregate length. The surface driveways are about fifteen miles in total length. These driveways, viaducts, bridge and tunnels connect with each other,

and are the means by which communication is had from one of the departments of the yards to the others. The entire area owned by the company amounts approximately to one hundred thirty-nine acres.

Seven of the Stock Yards Company's railroad tracks begin in Missouri near the State line, on the south boundary of the yards, and run thence to the company's unloading-chutes, which are in Kansas, at which places the stock is unloaded into the yards. Another track runs to the shipping division, and is used for feed brought by the company into the yards. The remaining two tracks are used for shipping stock out, and run along the chutes from which the stock is reloaded. The feed and shipping tracks are all in Missouri. The aggregate length of all these tracks is four miles.

Live stock arriving at the yards is disposed of as follows: Quarantine cattle are delivered by the railroads from their tracks at chutes at the quarantine division, where the same remain under the custody and supervision of the United States Government live-stock inspector, resident at the yards. After the stock has been passed by these inspectors, it is sold in the quarantine division, and driven to the packing-houses for slaughter or the shipping-chutes. The method of dealing with this kind of cattle will be treated more in detail hereafter.

Stock entering the yards over the seven tracks above mentioned, after being unloaded by the company at the chutes, is distributed in pens under the personal supervision and direction as to location of the agent of the shipper; some agents preferring

pens in Kansas, others, pens in Missouri;—such preference being exercised by the shipper, in order, according to his judgment, to display his property to the best advantage for sale, having regard to his customers and the particular character of the stock in any case. All cattle are sold in the pens where they have been yarded.

Cattle, including calves, purchased at the yards for shipment to other States, are driven by the company to the shipping division and loaded into the cars of the railroad company designated in the bill of lading on which they were originally routed. Cattle sold at the yards for immediate slaughter are driven by the packers to their establishments. Most of the hogs come into the yards over the seven tracks heretofore mentioned, and are yarded and sold in Kansas for immediate slaughter. The same is true of sheep, except some considerable part is sold for shipment to other States.

When the negotiations of sales of stock are completed, the stock is weighed upon the company's scales, and the sale consummated upon the certificates of weights furnished by the company. The company's charges for yardage accrue before any sale is consummated.

The report of the Special Master was made and filed August 24th, 1897. (R. 57-80.) The Master reported the total receipts of the Stock Yards Company for 1896, the year prior to the enactment of the law complained of, were $1,023,870.20. The Master further reported that if the rates fixed by the act of March 3d, 1897, had been applied to the business of the com-

pany for 1896, the net income would have been reduced $300,-651.70 for that year alone. (R. 80.)

The parties stipulated that the final hearing of said case should commence on October 18th, 1897. (R. 874-875.) Before the hearing, the Attorney-General filed the following statement and admission:

"That there was no collusion between the complainant in the above entitled suits and the defendant the Kansas City Stock Yards Company, or any of its officers, directors or attorneys, solicitors or counsel, in respect to the bringing or prosecution of said bills or either of them, and that the said bills were not, when the same were exhibited, and are not collusive to confer upon a court of the United States jurisdiction of the said causes." (R. 874-875.)

Subsequently, the answers and replications were filed. (R. 877-938.)

The cause came on to be heard on October 18th, 1897, upon the pleadings and proof, in accordance with the stipulation of the parties. (R. 939-940, 874-875.) The argument of the cause was concluded on October 20th, 1897. (R. 940.) The court took the same under advisement, and on October 28th, 1897, the opinion of the court was handed down, and a final decree entered dismissing the bills of complainants.

The decree shows by its recitals that all the parties to the suit were in court at the rendition of said decree, and that the complainants "duly excepted at the time in open court to the order and decree of said court dismissing said bills of complaint and each of them, and thereon in due form prayed for an appeal,

which is duly allowed." (R. 947-948.) Thereafter the complainants perfected their appeal to this court, and all of the defendants entered their appearance thereto in this court.

It is conceded that the structures, buildings, and all other improvements, separate from the real estate are of the reasonable value of $1,480,000; the Master appraised certain personal property, consisting of hay, grain, horses, wagons, office furniture, etc., at $307,377.25, and the land, "divested of all improvements," at $3,600,626, aggregating $5,388,003.25, as the reasonable value of the tangible property of the company, *but it will be noticed from his report that he valued the naked land, then valued the improvements separate and apart therefrom, and then valued the personal property separate and apart from the improvements and the land. He did not value the property of the Stock Yards Company used as a unit, taking into consideration the use to which it is put and all the elements making up its aggregate value.* He did not include in the reasonable value of the property the proportionate part of the value resulting from the combination of the means by which the Stock Yards Company's business is carried on,—a value existing to an appreciable extent throughout the entire domain of its operation.

Findings of Master, Nos. 43-47. (R. 77, 851-856.)

It is the contention of the complainants that the valuation of the property by the Master was based upon the evidence of incompetent experts, and upon insufficient and irrelevant testimony. Foster, J., in the opinion handed down by him, added

$126,140 to the valuation found by the Master, making the reasonable value $5,614,143.

Cotting v. Stock Yards Co., 82 Fed. 839-849.

THAYER, J., accepted the value of the property as fixed by the Master. He observed:

"Conceding, as we must, that the legislation complained of was radical in its nature and effect, that it reduced the company's income about 50 per cent., and that it prevents it from realizing on the capital invested in its plant such a per cent. as is ordinarily realized on capital invested in other mercantile and business enterprises, still the court is not prepared to hold that the statute is confiscatory, and that it deprives the company of its property without due process of law.

. . . . . .

"The great importance of the questions involved in these cases will doubtless occasion an appeal to the Supreme Court of the United States, where they will be finally settled and determined. If, on such appeal, the Kansas statute complained of should be adjudged invalid for any reason, and in the meantime the statutory schedule of rates should be enforced, the Stock Yards Company would sustain a great and irreparable loss. Under such circumstances, as was said, in substance, by the Supreme Court in *Hovey v. McDonald*, 109 U. S. 150, 161, 3 Sup. Ct. Rep. 136, it is the right and duty of the trial court to maintain if possible, the *status quo* pending an appeal, if the questions at issue are involved in doubt; and equity rule 93 was enacted in recognition of that right. The court is of the opinion that the cases at bar are of such moment, and the questions at issue so balanced with doubt, as to justify and require an exercise of the power in question." (R. 945-946.)

Cotting v. Stock Yards Co., 82 Fed. 850-857.

THAYER, J., in his opinion followed the findings of the Master as to the net income of the Stock Yards Company for 1896, and

did not consider the written stipulation of the parties (R. 82, 89-91), of the disbursements *"for operation, maintenance and extensions of improvements,"* by the Stock Yards Company in that year. (R. 82, 89-91.)

According to this stipulation the gross income of the Stock Yards Company in 1896 was $1,023,870.20, and there was disbursed during the same time *"for operation, maintenance and extensions of improvements" $537,643.70.* (R. 82, 89-91.) The net income of the Stock Yards Company, therefore, for the year 1896 amounted to the sum of $486,226.50. Out of this, the company paid a dividend of six per cent. upon its stock, amounting to $429,160.50, leaving as surplus, after paying the dividend, from the earnings of the stock yards for the year of 1896 the sum of $57,066. *There was no capital stock of the company issued in 1896 to pay "for operation, or maintenance or the extensions of improvements" of the company.* (R. 82.) *No bonds of the company were then issued, and none have ever been issued.* Therefore, under the stipulation of the parties, the total disbursements for 1896, of $537,643.70, (which include $169,584.65 *"for operation, maintenance and extensions of improvements in 1896,"*) is properly chargeable to earnings as operating expenses or cost of maintenance. The net income, therefore, of the Stock Yards Company for 1896, instead of being, as reported by the Master, $646,588.73, was only $486,226.50, as stated above.

If the rates prescribed by the Kansas statute for yarding and feeding stock had been in force during the year 1896, the net

income of the Stock Yards Company from all sources, whether regulated by the statute or not, would have been reduced for the year to the extent of $300,651.77, leaving a net income of $185,574.73 only; thereby destroying or confiscating to an unconstitutional degree the income or compensation for the use of the stock yards property. The owners thereof would be deprived unjustly of their property without due process of law if the provisions of the act of March 3d were enforced.

The appellants contend that upon all of the competent testimony contained in the record, the whole property of the Stock Yards Company as a going concern is worth from nine million to ten million of dollars; that the reasonable value of the property of the company should be estimated as a unit,—as an entirety,—as a plant designed for a specific object; *that its value ought not to have been estimated by the Master or the court below in parts, but taken as a whole.* The testimony is that the reproduction of the plant at the present time would cost *"anywhere from eight to ten millions of dollars."* If the property of the Stock Yards Company is estimated at the market value of its stock, as quoted in the stock exchanges at Boston and Kansas City in January, 1897, the property of the company is of the reasonable value of $9,715,000. As before stated, the gross earnings in 1896 were $1,023,870.20. The running expenses for that year amounted to $368,059.05, leaving excess of gross income over running expenses of $655,810.15. *But under the written stipulation of the parties, showing disbursements for 1896 "for operation, maintenance and extensions of improve-*

* The gross income of the property used for stock-yards purposes only was, in 1896, $1,012,271.22, and the net income from that property, if the rates of 1897 were applied, would have been $176,322.31.

ments," $169,584.05 should be deducted, which shows a net income for 1896 of $486,226.50, applicable to dividends, which is about 5.78 per cent. upon the capital stock. (R. 82, 91.)

If the statutory rates prescribed by the act of 1897 had been in force in 1896, then the total net income would have been only ~~$185,574.73~~ *176,322.31, which is approximately 2.5 per cent. upon the stock.*

The act of March 3d, 1897, does not attempt to regulate all of the sources of income. The net income from the sources regulated is reduced a fraction over 75 per cent., so that in arriving at the proper result the entire net income should be considered as reduced 75 per cent., and the remainder treated as the true test of the act.

Applying this rule to the business of 1896, the entire net income so reduced would have been in that year $120,752.95, which is 1.5 per cent. on $8,000,000, and 1.2 per cent. on $10,000,000.

In Kansas, the legal rate of interest is six per cent. per annum, when no other rate of interest is agreed upon, but the parties to any written instrument may stipulate therein for interest receivable at a rate not exceeding ten per cent. per annum. (Vol. 2, Gen. Stat. 1897, ch. 116, p. 596.)

On January 9th, 1899, L. C. Boyle, formerly Attorney-General, retired from office, his term having then expired. On the same day, A. A. Godard, the newly elected Attorney-General, duly qualified as Attorney-General and entered upon the possession of his office and the performance of the duties thereof. As the suit brought in the court below was in its nature against the

office of Attorney-General and not against the person filling such office, the new Attorney-General was substituted by the order of this court as a defendant, and he has duly filed his appearance to the appeal.

As this is an appeal in an equity suit, the whole case is before the court for decision.

A SPECIFICATION OF THE ERRORS RELIED UPON.

The decree of the United States Circuit Court for the District of Kansas, rendered October 28th, 1897, is erroneous and against the just rights of the complainants and of each of them, for the following reasons:

First: Because the testimony shows that the necessary operation of the act of March 3, 1897, as applied to the Stock Yards Company and its property used for stock-yards purposes, would be to abridge the privileges and immunities of said company, (a citizen of the United States,) contrary to the provision of section 1 of the fourteenth amendment to the Constitution of the United States, and to abridge the privileges and immunities of the complainants as stockholders in said company.

Second: Because the testimony shows the Stock Yards Company, being a private corporation, was, prior to the enactment of the act of March 3, 1897, relating to stock yards, and complained of in the bills of complaint filed herein, in the unrestricted enjoyment of the use of private property, and that said act devoted the property of said corporation to a public use without providing any machinery by which the value of such use might or could be ascertained, and failed to provide any compensation for such taking of private property of the company for public use.

Third: Because the testimony shows that the necessary operation of the said act of March 3, 1897, if applied to the Stock Yards Company, would deprive the complainants herein and the said defendant Stock Yards Company and each of them of their property without due process of law, contrary to the provisions of section 1 of the fourteenth amendment of the Constitution of the United States.

. . . . . .

Fifth: Because the testimony shows that the act of March 3, 1897, complained of herein, was and is repugnant to the provisions of section 1 of the fourteenth amendment to the Constitution of the United States, which provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws."

Sixth: Because the court erroneously found and held in the said decree that the business of the Stock Yards Company was not in whole or in part interstate commerce, and that the property owned and used by said company was not an instrument of such commerce.

Seventh: Because the testimony shows that the act of March 3, 1897, complained of herein, was and is repugnant to that part of section 8 of article 1 of the Constitution of the United States which provides that "The Congress shall have power to regulate commerce with foreign nations and among the several States."

Eighth: Because the testimony shows that the act of March 3, 1897, complained of herein, if applicable to the Stock Yards Company or to the business in which it is engaged, was and is

repugnant to sections 4386, 4387, 4388, 4389 and 4390 of the Revised Statutes of the United States.

Ninth: Because the testimony shows that the act of March 3, 1897, as applied to the Kansas City Stock Yards Company and to the business in which it is engaged, was and is repugnant to an act entitled "An act to regulate commerce," enacted by the Congress of the United States, approved February 4, 1887.

Tenth: Because the testimony shows that the act of March 3, 1897, complained of herein, if applied to the Stock Yards Company, or to its business, was and is repugnant to an act of Congress of April 3, 1884, entitled "An act to establish a bureau of animal industry, and to prevent the exportation of diseased cattle," etc., and amendments and acts supplemental thereto.

Eleventh: Because the testimony shows that all of the feed sold by the Stock Yards Company was sold and paid for in the State of Missouri, and yet the court erroneously found and held that the prices of such feed so sold and paid for in the State of Missouri are regulated and controlled by the act of the Legislature of March 3, 1897, complained of herein, and also erroneously found and held that said act applied to the sales of feed so sold and paid for in the State of Missouri.

. . . . . .

Fourteenth: Because the court erroneously found that the said act of March 3, 1897, relating to stock yards, and complained of herein, applied to charges made by the defendant Stock Yards Company for the use of its property situated wholly within the State of Missouri.

. . . . . .

Sixteenth: Because the testimony shows that the present value of the property of the Stock Yards Company, used exclusively for stock-yards purposes, as a completed structure or unit, was and is over $9,500,000, yet the Special Master in his report erroneously fixed the present value of the property of the Stock Yards Company, used and operated for stock-yards purposes, as a dead structure and in segregated parts only, and such valuation in such form was erroneously approved by the court, and the court erroneously valued said property in the same way and refused to value said plant or property of the Stock Yards Company as a completed structure, or as a unit, or as a going concern, and erroneously refused to value or consider as of any value the connections that said Kansas City Stock Yards Company had at and prior to the commencement of these suits and still has, and then and now existing, between such plant or system, and the several beef and pork packing establishments connected with and adjoining the said stock yards, and the connections made and then and now existing between the said Kansas City Stock Yards Company and the various common carriers and railroads having connections therewith.

. . . . . .

Eighteenth: Because the testimony shows that the tangible and intangible property of the Stock Yards Company possessed a value in combination and from use, which ought to have been recognized in estimating the present actual value of the plant and property of said company, and yet the court wholly ignored the value of the intangible property of said company, and failed and refused to give any value to the tangible and intangible

property on account of its combination and use together, as a unit in its operation and management.

Nineteenth: Because the court (without any examination of the evidence offered and submitted upon the trial) founded its final decree solely and alone upon the findings of the Special Master, filed in this court on August 24, 1897, and upon the alleged facts therein stated, when in truth and in fact findings numbers sixteen, forty-one, forty-three, forty-six, forty-seven and forty-eight of said Special Master's report are not supported by the preponderance of the evidence, or the weight of the evidence, or by any competent evidence whatever, and all of the evidence in the record is contrary to and contradictory of each of said findings aforesaid.

Twentieth: Because the court overruled the ninth exception of the complainants to the sixteenth finding of the Master's report, when the evidence showed that the cash investment of the Stock Yards Company in the property, the cost of which, under the order of reference, was to be ascertained by the Master, amounted to the sum of $6,374,208.07.

Twenty-first: Because the testimony showed that the cash investment made by the Stock Yards Company in the property used and occupied by it for stock-yards purposes was, at the commencement of these suits, $6,374,208.07, when the court erroneously assumed, found and held that such investment was only $3,852,361.81.

Twenty-second: Because the court erroneously overruled the thirteenth exception of the complainants to finding number

thirty-three of the Master's report, respecting the earnings and expenditures of the defendant Stock Yards Company, when the said finding was contradicted by the stipulation of the parties filed herein, and made "for the purpose of removing any question which may exist in regard to the manner in which the earnings of the Stock Yards Company are or were disbursed."

Twenty-third: Because said stipulation of the parties showed that the income of the Stock Yards Company for 1896 amounted to the sum of $1,023,870.20, and that the expenditures out of the earnings for the same year for operating and maintaining its plant in a serviceable condition, amounted to the sum of $537,543.70, and the court, wholly disregarding said stipulation, erroneously found and held said earnings and disbursements at other and different sums, and at a much less sum than that agreed to by the parties in writing.

Twenty-fourth: Because the court erroneously overruled the sixteenth exception of the complainants to finding number thirty-five of the Master's report, when the said finding was contrary to the stipulation of the parties produced before said Master and also before said court.

Twenty-fifth: Because the court erroneously overruled the eighteenth exception of the complainants to finding number thirty-seven of the Master's report, when said finding was in direct conflict with the stipulation of the parties, concerning the expenditures of the said Stock Yards Company during the first five months of the year 1897.

Twenty-sixth: Because the court erroneously overruled excep-

tion twenty-three of the complainants to finding number forty-three of the Special Master, respecting the value of the property of the Stock Yards Company, when the evidence showed that such property was at the commencement of these suits and still is, of the value of more than $9,500,000, and said Master's report erroneously showed the value of said property to be only $5,388,003.25, and the said court erroneously accepted the said so-called value of $5,388,003.25 as the present actual value of the said property, in direct conflict with all of the evidence in the cause.

Twenty-seventh: Because the court erroneously overruled exception twenty-eight of the complainants to finding number forty-eight of the Special Master, respecting the market value of the outstanding capital stock of the defendant Stock Yards Company, when the evidence upon this question showed that the market value of the outstanding stock during all of the year 1896 and immediately prior to the passage of the act of March 3, 1897, complained of in the bills of complaint filed herein, was more than $135 per share of the par value of $100, and the court thereon erroneously failed and refused to find that the value of the property of the Stock Yards Company, based upon the amount for which the stock of the said corporation was bought and sold in the market.

Twenty-eighth: Because the court erroneously declined to ascertain the value of the property of the defendant Stock Yards Company by an examination of the evidence in the record, which conclusively showed the market value of the outstanding capital

stock of the Stock Yards Company during the year 1896 and immediately prior to the passage of the act of March 3, 1897, complained of in the bills of complaint filed herein.

Twenty-ninth: Because the court erroneously overruled the exceptions of the complainants to findings of the Special Master, and each and all of said exceptions.

Thirtieth: Because the evidence showed that the cost of reproducing the property of the Stock Yards Company at the present time and also just before the commencement of these suits, would have exceeded the sum of $9,500,000, and the court erroneously declined to give any consideration to such evidence in ascertaining the value of said property, and refused to fix the value of said property at the present cost of reproduction.

Thirty-first: Because the court erroneously found and held that the defendant company, under the operation of the act of March 3, 1897, complained of in the bills of complaint filed herein, would receive an annual net income of between five and six per cent. upon the present actual value of the property, when the testimony conclusively shows that the annual net income of said company under the operation of the said act of March 3, 1897, if applied to the business of the Stock Yards Company and the property used by it for stock-yards purposes, would be less than two per cent. upon the present actual value of said property.

Thirty-second: Because in reaching the conclusion that the net income of the defendant company, under the operation of the act in question, would be between five and six per cent. upon the

value of its property, the court erroneously included in such net income the whole income derived by the defendant company from sources not affected by the statute and not derived from the stock-yards business.

Thirty-third: Because the court received and considered as testimony tending to show the present actual value of the property of the Stock Yards Company, used for stock-yards purposes, the evidence of one C. D. Parker, produced as a witness by the defendant Louis C. Boyle, as Attorney-General of the State of Kansas, and subsequently based its decree on such and similar testimony, when the following evidence of the said Parker shows that he was not a proper expert witness as to the value of the property in controversy, and was not competent to give any testimony in that regard.

"Q. You don't know anything about the value of the use of that land for stock-yards purposes? A. No, sir.

"Q. If another stock yards company should come in, do you think it could procure as desirable a location in the bottom? A. I don't think it could.

"Q. Now state, if you can, what is the actual present value of the land for stock-yards purposes? A. I don't know."

Thirty-fourth: Because the court received and considered as testimony tending to show the present actual value of the property of the Stock Yards Company, used for stock-yards purposes, the evidence of one E. S. Merrill, produced as a witness by the defendant Louis C. Boyle, as Attorney-General of the State of Kansas, and subsequently based its decree on such and similar testimony, when the following evidence of the said

Merrill shows that he was not a proper expert witness as to the value of the property in controversy, and was not competent to give any testimony in that regard:

"Q. What is the land worth in this tract marked 'E,' concerning which you have testified, lying east of Water street, in its present condition, just as it stands to-day? A. I don't know.

"Q. Then, as I understand your testimony, you are not testifying about the value of the property as it stands to-day, in its present condition? A. Not improved property.

"Q. You can answer that question by yes or no. You are not testifying of the value of 'E' as it stands to-day? A. No.

"Q. Now, then, in making up your value in reference to the tract marked 'E,' you consider that as naked acre property without any improvements, or without any business at all? A. Yes, sir.

"Q. That is the fact, is it? A. Yes, sir."

Thirty-fifth: Because the court received and considered as testimony tending to show the present actual value of the property of the Stock Yards Company, used for stock-yards purposes, the evidence of one E. F. Allen, produced as a witness by the defendant Louis C. Boyle, as Attorney-General of the State of Kansas, and subsequently based its decree on such and similar testimony, when the following evidence of said Allen shows that he was not a proper expert witness as to the value of the property in controversy, and was not competent to give any testimony in that regard:

"Q. Do you know the present value of the use of this land by the Stock Yards Company? A. What they are worth to the Stock Yards Company?

"Q. Yes, sir. A. No, sir.

"Q. In making your estimates of value, you were not influenced by the value of the use to which the lands were put by the company? A. No, sir.

"Q. Not at all? A. No, sir."

Thirty-sixth: Because the court received and considered as testimony tending to show the present actual value of the property of the Stock Yards Company, used for stock-yards purposes, the evidence of one R. E. Cable, produced as a witness by the defendant Louis C. Boyle, as Attorney-General of the State of Kansas, and subsequently based its decree on such and similar testimony, when the following evidence of the said Cable shows that he was not a proper expert witness as to the value of the property in controversy, and was not competent to give any testimony in that regard:

"Q. Have you sold any real estate in the vicinity of that tract? A. No, sir.

"Q. Have you bought any? A. No, sir.

"Q. You have never had any transactions of buying or selling property around there? A. No, sir.

"Q. What, in your opinion, is that tract 'E' worth just as it is to-day? A. For general purposes, or for the purposes for which it is being used?

"Q. For the purpose for which it is being used. A. Certainly, I could not answer that question.

"Q. You don't know? A. No, sir."

Thirty-seventh: Because the court received and considered as testimony tending to show the present actual value of the property of the Stock Yards Company, used for stock-yards purposes, the evidence of one C. W. Whitehead, produced as a witness by the defendant Louis C. Boyle, as Attorney-General of the State

of Kansas, and subsequently based its decree on such and similar testimony, when the following evidence of the said Whitehead shows that he was not a proper expert witness as to the value of the property in controversy, and was not competent to give any testimony in that regard:

"Q. What is this property marked 'A,' 'B,' 'C,' 'D' and 'E' worth for stock-yards purposes? A. I don't know.

"Q. What is the value of this property for railroad purposes? A. I don't know.

"Q. What is the value of this property for packing-house purposes? A. I don't know anything about the packing-house business.

"Q. What would be the value of that property for packing-house purposes? A. I have stated, I believe, that I don't know."

Thirty-eighth: Because the court erred in giving any consideration whatever to any of the testimony produced by the defendant Louis C. Boyle, as Attorney-General of the State of Kansas, concerning the present actual value of the property of the Kansas City Stock Yards Company, used and operated for stock-yards purposes in the States of Kansas and Missouri, including the structures thereon and personal property necessarily connected therewith, for that none of such testimony valued or considered the plant or property of the Kansas City Stock Yards Company as a unit, or as a completed structure, or as an entirety, or as a going concern, but all of said testimony estimated and assessed the value of the lands thereof as naked land only, divested of all improvements, and then valued the improvements separate and apart from the land, and then valued the personal

property separate and apart from the improvements or land; whereas, the Special Master and also the court should have valued all the property of the Kansas City Stock Yards Company used for stock-yards purposes, as a unit, taking into consideration the uses to which it is put and all the elements making up its aggregate value, and the value thereof ought not to have been confined to naked lands, improvements separate and apart therefrom, and personal property separate and apart from the improvements and lands, but the value of each part of said plant, if valued separately, should have included the proportionate part of the value resulting from the combination of the means by which the Stock Yards Company's business was carried on, a value existing to an appreciable extent throughout the entire domain of its operation.

. . . . . .

Fortieth: Because said act of March 3, 1897, relating to stock yards, and complained of in the bills of complaint filed herein, is invalid as class legislation and as being directly contrary to the provisions of section 1 of the fourteenth amendment to the Constitution of the United States.

Forty-first: Because the testimony shows that the stock yards owned and operated by the defendant company was the only stock yards within the State of Kansas to which the act of March 3, 1897, was intended to or could have any application.

. . . . . .

Forty-fourth: Because the decree of the court and the written opinion of the court filed in support thereof, are contrary to the weight of the evidence.

Forty-fifth: Because the decree of the court and the opinion of the court filed in support thereof, are contrary to all of the evidence.

Forty-sixth: Because the decree of the court and the opinion of the court filed in support thereof, are contrary to law.

Forty-seventh: Because the decree of the court should have been rendered in favor of the complainants and each of them, upon the testimony submitted.

(R. 950-961, 966-968.)

FIRST POINT.

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 87, BEING CHAPTER 240, SESSION LAWS OF KANSAS OF 1897, RELATING TO STOCK YARDS, IS CLASS LEGISLATION, AND VIOLATIVE OF THE EQUALITY CLAUSE OF THE FOURTEENTH AMENDMENT.

It appears from the House Journal of the Kansas Legislature of February 10th, 1897, and from the Senate Journal of the Kansas Legislature of 1897, (R. 814-816), that the substitute for House Bill No. 87, now published as chapter 240, Session Laws of Kansas of 1897, *was enacted and intended to apply to the Kansas City Stock Yards Company only—to no other corporation or company.* (R. 814-816.)

It is true that the act in controversy does not specifically name the Kansas City Stock Yards Company, yet the proceedings of the House and Senate of the Legislature of the State of Kansas, on February 9 and 10, 1897, as well as the act itself, so refer to and describe the Kansas City Stock Yards that there can be no question with regard to the application of the law to those yards, and those only; and this is substantially the same as naming the company.

At the session of the Legislature of Missouri, on February 5th, 1897, the Legislature appointed a committee to confer with a similar one to be appointed by the Legislature of Kansas, "*regarding the regulation and control of the stock yards lo-*

cated at Kansas City, Missouri, and Kansas City, Kansas." (R. 814-816.)

On February 9, 1897, the Kansas State Senate adopted a resolution that a committee consisting of five members—two from the Senate and three from the House—should be appointed to meet and confer with the committee appointed by the Legislature of Missouri, for the purpose above stated. This resolution was adopted, and Messrs. Jumper and Morrow were appointed the members of the committee from the Senate. (Senate Journal of 1897, p. 413. R. 814.)

On February 10, 1897, the Kansas House of Representatives adopted a resolution, similar to the one referred to, to confer with the Missouri committee "*regarding the regulation and control of the stock yards located at Kansas City, Missouri, and Kansas City, Kansas.*" (House Journal of 1897, pp. 428-429. R. 815.)

The members of the committee appointed by the House were Messrs. Jaquins, Ravenscraft, and Johnson.

On February 17, 1897, Mr. Jaquins, chairman of the Committee on Live Stock appointed by the Senate and House, reported the substitute for House Bill No. 87, heretofore referred to. (R. 816.) He stated in his report that upon a conference with the Missouri committee, this bill was deemed "judicious and wise legislation." (House Journal of 1897, p. 598. R. 816.) The proceedings of the Legislature as they appear in its journals may be considered in interpreting an act passed by that body.

Mr. Jaquins, who was appointed upon the committee of the Legislature of Kansas to meet a like committee of the Legislature of Missouri, was made chairman of that select committee (R. 816), and was also the chairman of the standing Committee on Live Stock in the Legislature of Kansas of 1897, and said substitute for House Bill No. 87, as reported by him as chairman of the Committee on Live Stock, is the act now known as chapter 240, relating to stock yards, Session Laws of Kansas of 1897, and is the act complained of in the bills filed herein. (R. 815-816.)

A copy of the Kansas Senate Journal of 1897, and of the House Journal for the same year, relating to said matters, is hereto attached, marked "Exhibit E." (R. 814-816.)

It is not claimed that there are any other stock yards in the State of Kansas that have the business of the Kansas City Stock Yards Company, or the average daily receipts of live stock referred to in section 1 of said chapter 240, Session Laws of Kansas, 1897. (R. 41-42.)

Section 1 reads:

"Any stock yards within this State, into which live stock is received for the purpose of exposing or having the same exposed for sale or feeding, and doing business for a compensation, and which for the preceding twelve months shall have had an average daily receipt of not less than one hundred head of cattle, or three hundred head of hogs, or three hundred head of sheep, are hereby declared to be public stock yards."

If we concede the power of the Legislature under some circumstances to classify stock yards companies, and prescribe one

rate for one class and other rates for other classes, the classification cannot be arbitrarily made.

In the case of the *Gulf, Colorado & Santa Fe Railway Co. v. Ellis*, 165 U. S. 150, Mr. Justice BREWER, speaking for this court, says:

"Yet it is equally true that such classification cannot be made arbitrarily. The State may not say that all white men shall be subjected to the payment of attorney's fees as parties successfully suing them and all black men not. It may not say that all men beyond a certain age shall be alone thus subjected, or all men possessed of a certain wealth. These are distinctions which do not furnish any proper basis for the attempted classification. That must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis.

. . . . . .

"It must be evident that differences which would serve for a classification for some purposes furnish no reason whatever for classification or legislative purposes. The differences which will support class legislation must be such as in the nature of things furnish a reasonable basis for separate laws and regulations.

. . . . . .

"It is apparent that the mere fact of classification is not sufficient to relieve the statute from the reach of the equality clause of the fourteenthamendment, and that in all cases it must appear not only that a classification has been made, but also that it is based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification."

A favorite method adopted by cunning Legislatures is to evade constitutional provisions forbidding unlawful discrimi-

nations. On the face of the act of March 3, 1897, taken in connection with what appears in the House and Senate Journals, no other stock yards but those of Kansas City could have been meant. The act was so framed that it was not likely, and hardly possible, that any other stock yards would come under the so-called law. The courts ought not to connive at the evasion pointed out.

Central Trust Co. of New York v. Citizens Street Railway Company of Indianapolis, 80 Fed. Rep. 218.

The Kansas Supreme Court has sustained in some instances the division of the cities of the State into certain classes, based exclusively on population; but in the case of the *City of Topeka v. Gillett,* 32 Kan. 431, it was decided that "*where an act of the Legislature is so special in its provisions that it can only apply to three certain cities, it is unconstitutional and void.*" In that case, it was observed by VALENTINE, J.:

"The question then, in the present case is, not whether the powers attempted to be conferred by the Legislature in 1875 upon certain cities of the second class by said chapter 73 of the Laws of 1875, are special powers or not; but the question is, whether the act attempting to confer such powers is a special act or not. As before stated, the act is general in its form, but as before intimated, the constitutionality of the act is not to be determined by its form, but is to be determined by what in the course of ordinary things must necessarily be its operation and effect. If its operation and effect must necessarily be special, the act is special, whatever may be its form."

See also—

State v. Simon, 22 Atl. Rep. 120.

State v. Hammer, 42 N. J. Law, 435.

State v. Smith, 26 N. E. Rep. 1069.
Harding v. People, 160 Ill. 459.

In the case of *Adams v. Nemeyer,* 54 Ohio St., 614, the court says:

"The act of the Legislature passed March 1, 1892, authorizing cities having at the last federal census a population of 18,553 to issue and sell the bonds of the city, to be used for the purpose of purchasing grounds and buildings within such city or its immediate vicinity for manufacturing purposes, is invalid because it is a special act of a general nature conferring corporate powers."

In *Railway v. Martin,* the Supreme Court of Ohio rebukes the favorite evasion by the Legislature of that State of seeming to adopt a general law, and yet making it local or special in its application, as follows:

"The classification of such cities upon such a basis is, in our judgment, too restrictive, uncertain and elusory to relieve the act from the constitutional infirmity of not being uniform in its operation throughout the State, but local and special in its character." (53 Ohio St. 386.)

A statute would not be constitutional which selects particular individuals from a class or locality and subjects them to peculiar rules or imposes upon them special obligations or burdens, from which others in the same locality or class are exempt.

Gillett v. Topeka, supra.
Cooley's Cons. Lim., 6th ed., 479, 482, 483, and notes.

See also the following cases, where acts of Legislatures have been held unconstitutional as class legislation:

Wages law of Missouri of 1885, applying to manufacturers and mine-owners. (*State v. Loomis*, 115 Mo. 307.)

State v. Goodwill, 33 W. Va. 179.

The eight-hour law of Nebraska of 1891, excluding farm hands. (*Low v. Printing Company*, 41 Neb. 127.)

Same ruling as to the eight-hour law of Colorado of 1895, concerning special industries. (*In re Eight-Hour Law*, 39 Pac. Rep. 328.)

Mining law of Illinois of 1883 and 1885, as to weighing-scales, etc. (*Millette v. People*, 117 Ill., 294.)

State v. Sheriff, 48 Minn. 236.

Law of California of 1893 relating to the classification of cities. (*Darcy v. Mayor*, 38 Pac. Rep. 500.)

An act of Ohio of 1888 applying to a city. (*City of Cincinnati v. Steinkamp*, 43 N. E. 490.)

City ordinance relating to Sunday law, excluding Jews. (*City of Shreveport v. Levy*, 26 La. Ann. 671.)

There is but one stock yards company in the State of Kansas which answers the description of the act of March 3, 1897. Those stock yards are operated by the Kansas City Stock Yards Company.

The action of the Legislature of 1897, relating to stock yards, was not a just and fair classification, but an arbitrary specification which applies to a single company.

Again, the court will notice that the Legislature intended to limit the provisions of said act of March 3d, 1897, to stock yards "*which for the preceding twelve months shall have had an average daily receipt of not less than 100 head of cattle, or 300 head of hogs, or 300 head of sheep.*" Giving the word "preceding" the usual construction, it was evidently the purpose of the Legislature of Kansas by inserting "preceding" to

mean twelve months prior to the date of the passage of said act of March 3d, 1897. If such construction be given to said section 1, then under all the authorities, the act must be declared unconstitutional, because it could under no circumstances have application to any other stock yards than the defendant in this suit. Under such a construction it is not probable, nor in the nature of things possible for the act to apply to any other stock yards in the future. As the statute was clearly intended for a particular case, and practically looks to no broader application, it is vicious class legislation, and therefore unconstitutional. When an act is found to fit a special case only, it is deemed to have been intended solely for it.

Sutherland's Const. of Stat., § 129, and the cases cited.

If it were possible, by any construction of section 1 of the act of March 3d, 1897, to apply the provisions thereof to any other stock yards in the future, it is apparent that in any event, for nearly twelve months, such new stock yards, having the daily receipts prescribed in the statute, would not have its rates and prices regulated or restricted by said act. Therefore, any stock yards that might in the future come within the provisions of said act would have nearly twelve months of discrimination in its favor as against the Stock Yards Company. Thereby the statute would deprive the defendant company of nearly twelve months of equal protection of the law, which is secured to it by the Fourteenth Amendment of the Constitution.

Section 1 does not classify by population, as in *Munn v. Illinois*, 94 U. S. 113, and *Budd v. New York*, 143 U. S. 517.

In the Munn case, the statute applied to the "warehouses at Chicago and other places in the State having not less than one hundred thousand inhabitants, in which grain is stored in bulk."

In the Budd case, the statute applied "only to places which have one hundred and thirty thousand population or more."

But section 1 of the act of 1897, for the reasons referred to, we think is outside of the decisions construing classification by population.

Equality of rights, privileges and capacities among all the people, so far as they are granted by law, or are enjoyed under its protection, has always been the general rule; special privileges are not to be granted to, nor special burdens imposed upon some members of the community; the State has neither favors to bestow, nor injuries to inflict upon any of its citizens. As was said by the Supreme Court of Massachusetts, as early as 1814, in the case of *Holden v. James*, 11 Mass. 396, 405: "It is manifestly contrary to the first principles of civil liberty and natural justice, and to the spirit of our Constitution and laws, that any one citizen should enjoy privileges and advantages which are denied to all others under like circumstances; or that any one should be subjected to losses, damages, suits, or actions, from which all others, under like circumstances, are exempted."

Mr. Justice Field observed, in the *Santa Clara Railroad Tax Case*, 9 Sawy. 165, and 118 U. S. 394:

"No State—such is the sovereign command of the whole people of the United States—no State shall touch the life, the liberty or the property of any person, however humble his lot

or exalted his station, without due process of law; and no State, even with due process of law, shall deny to any one within its jurisdiction the equal protection of the laws."

The Kansas City Stock Yards Company, although a corporation, is a person within the Fourteenth Amendment.

Smyth v. Ames, 169 U. S. 466.

SECOND POINT.

THE FINAL DECREE OF THE COURT BELOW NECESSARILY GIVES TO THE ACT OF MARCH 3d, 1897, RELATING TO STOCK YARDS, EXTRA-TERRITORIAL FORCE.

The collections by the Stock Yards Company, under the head of yardage and feed, embrace, as before stated, all of the charges of the company for services from the time the live stock is unloaded in the yards until it is sold or reshipped, including driving, yarding, feeding, watering, weighing (in case the stock is sold), responsibility for safety of stock in the yards, the privilege of a valuable market on the grounds of the company, and other necessary services. The income from the sale of feed by the Stock Yards Company in 1896 was $187,994.69, after deducting the cost of the feed, which was of the best quality, *but allowing nothing whatever for the very large expense of handling and delivering it*, or for its insurance, care, etc.

Finding of Master, No. 20. (R. 65.)

"ALL OF THE FEED IS SOLD AND PAID FOR IN THE STATE OF MISSOURI."

Finding of Master, No. 21. (R. 65.)

The company delivers the feed, after it is bought and paid for in Missouri, at such pens or places in Missouri or Kansas and in such quantities as may be required by the purchaser. The delivery of the feed is usually required in small quantities. The amount so called for being inconsiderable for each head of stock, exact accounts are necessarily kept by the company of all of these small orders.

The following table No. 1 shows the gross income, cost of operation and maintenance (according to the written stipulation of the parties), and net income from the sale of feed at the yards in 1896:

FEED. TABLE No. 1.

	Gross Income.	*Rate % of operation and cost of maintenance, as per stipulation, 52.51%.*	*Net Income.*
Amount received for feed (less cost) served to cattle, hogs, calves and sheep	$150,432.54	$78,992.13	$71,440.41
Amount received for feed in horse and mule department (less cost),	27,385.59	14,380.17	13,005.42
Amount received for feed in Gould barn (less cost)	10,176.56	5,343.71	4,832.85
Totals	$187,994.69	$98,716.01	$89,278.68

(R. 74.)

The following table shows what would have been the result upon the business of the Stock Yards Company in 1896, in its transactions in feed, if the rates provided for by the act approved March 3, 1897, had prevailed in that year:

FEED. TABLE No. 2.

	Gross Income.	*Cost of operation and maintenance the same as in Table No. 1.*	*Net Income.*
Amount received for feed served to cattle, calves, hogs and sheep (less cost of feed)	$74,258.34	$78,992.13	—$4,733.79 Deficit.
Amount received for feed in horse and mule department (less cost of feed)	27,385.59	14,380.17	13,005.42
Amount received for feed in Gould barn (less cost of feed)	6,104.27	5,343.71	760.56
Totals	$107,748.20	$98,716.01	$9,032.19

It appears from this table that the rate per cent. of diminution of income from feed by the application of the act is as follows:

On net income from the sale of feed, outside of horse and mule department and Gould barn, 106.6 per cent.

On net income from horse and mule department, no change whatever; the income and expenditures remain the same, for the reason that in 1896 the rate per cent. of profit was less than one hundred.

On net income from Gould barn, the per cent. of reduction is 84.27.

The total amount of the reduction is $80,246.49, which is a rate per cent. of 89.88.

The Master reports in finding No. 38, that—"The cost of hay and grain consumed by cattle, calves and hogs and sheep was $74,258.34. The company received therefor, $224,690.88, or a profit of 202.58 per cent.

"The cost of hay and grain consumed in the horse and mule department was $29,839.85, represented by the per capita charges mentioned in finding No. 24. The company received for such hay and grain, $57,225.44, or a profit of 91.78 per cent.

"The cost of the hay and grain consumed in the Gould barn was $6,104.27, represented by the gross earnings of the barn; the company received for such hay and grain $16,280.83, or a profit of 166.71 per cent. It will thus be seen that all the hay and grain consumed cost $110,202.46, and was sold for $298,-197.15, which produced a profit of $187,994.69, or an average of 170.59 per cent. (R. 74.)

The findings of the Master as to the profits realized by the

company in selling hay and grain, are misleading, because they do not take into consideration any expenses connected with the sale and delivery, or the insurance, or the expenses of storing and caring for the same. Nor do the findings take into consideration any expenses whatever for the cost of operating and maintaining the yards where the hay and grain are sold. The findings embrace the actual moneys received by the Stock Yards Company for the hay and grain sold, less the actual price paid for the same. This and nothing more.

[See stipulation as to purchases of hay and grain for 1896 (R. 81.); The stipulation of the parties of the disbursements of the earnings of the Stock Yards Company in 1896, "*for operation, maintenance and extensions of improvements*" (R. 82, 89-91); The stipulation of the parties concerning moneys actually expended by the Stock Yards Company during the first five months of the year 1897, "*for operating expenses and cost of maintenance.*" (R. 81-82.) Findings of Master, Nos. 20 and 21.] (R. 65.)

No one is permitted to sell hay or grain except the company in the yards, but shippers of live stock, if they prefer, may feed their stock in the railroad cars transporting the same before they reach the yards. Mr. E. Peck, a stock raiser of Cloud county, Kansas, a witness called by the Attorney-General, testified, among other things, as follows:

"Q. What is the practice of shippers to feed in the cars? A. I feed in the cars.

"Q. Do you know whether any considerable number of ship-

pers feed in the cars, and do not feed in the yards? A. I know they don't. I can say that for most of them from our country.

"Q. Why don't they feed in the yards? A. On account of the grain being so high." (R. 788-789.)

He further testified, as follows:

"Q. Do you know what the average amount of feed to the carload of hogs at the Kansas City market is? A. I know what they used to feed.

"Q. How much? A. About a bushel and a half.

"Q. How much would that be to the head? A. I don't know.

"Q. It wouldn't be 2 cents, would it? A. I don't know.

"Q. Well, at a dollar a bushel for 71 head in a car, and a bushel and a half to the car, would be about 2 cents a head, would it not? A. Something like that.

"Q. And you say you don't feed in the yards on account of the expense? A. Yes, sir." (R. 789.)

Mr. N. B. Greer, who is engaged in Kansas City, Missouri, in the live stock commission business, called as a witness by the Attorney-General, testified that he had often received orders from the owners of stock not to feed their stock, on account of the prices in the yards; and he further testified:

"Q. Where do they feed when they don't feed in the yards? A. In the car,—corn to the hogs and hay to the cattle."

(R. 792.)

Finding No. 36 of Master. (R. 73.)

Therefore, it appears from the testimony offered by the Attorney-General that the Stock Yards Company not only has no legal monopoly of the sale of hay and grain for feeding cattle transported to the yards, but it has no actual or practical monopoly thereof, because shippers, if they desire, may feed

their live stock hay and grain upon the cars before reaching the yards. That they generally feed their cattle in the yards is a matter of preference,—not of compulsion,—if the live stock are sold, as they usually are, on the morning of their arrival in Kansas City.

All live stock reach the yards about the same time; that is, the great bulk of the receipts of live stock designed for the market. The railroad companies, to accommodate the shippers, arrange the time of arrival of their stock trains so that the stock is received, unloaded and yarded between the hours of midnight and eight o'clock in the morning,—with probably three-fourths of it between five o'clock and eight o'clock in the morning. The live stock market "opens from half-past seven to half-past eight;—if it is a sharp market, a little earlier; if it is a little draggy it may run along as late as ten o'clock before they begin to sell." (Testimony of Harry P. Child, Assistant General Manager of the Stock Yards Company. R. 111.)

The live stock are fed by the Stock Yards employés whatever amount of hay is ordered by the owner or his commission-man. The average is 115 pounds per car-load of 23 cattle. *About five cents' of hay is fed on an average to each head of cattle. The charges for cattle per head for hay and watering, including yardage and all the services connected therewith, is five cents for hay and twenty-five cents for yardage, making in all thirty cents. After cattle reach the yards, additional weight is given to each head by the hay and water that is furnished by the company, on an average of 35 pounds. If the owner or shipper gets the addi-*

tional price for this hay and water, it would amount to $1.15 for each head, for which he pays the Stock Yards Company thirty cents. On an average, the cattle take, after they reach the yards, about thirty pounds of water. It sometimes runs up to 75 pounds. After the cattle are filled, and get all that they will drink, they are weighed. The watering and feeding is before weighing. (R. 113-116.)

Mr. Child, Assistant Superintendent, also testified:

"Q. How many tons of hay did you use last year? A. 11,400, I believe.

"Q. Tons? A. Yes, sir; nearly 11,500 tons.

"Q. How much did you sell that for per ton? A. Twenty dollars.

"Q. How much did it cost you? A. For the hay alone, about seven dollars a ton.

"Q. Where did you buy it? A. We contracted three-fourths of it of different men in different parts of the State and bought about one-fourth of it on the market.

"Q. Do you mean to say you paid seven dollars a ton for the hay you contracted for? A. Yes, sir; we had to do it because we use such an enormous amount of it, and not choice hay, but gilt-edged hay. We have to have a strictly fancy brand of hay. Charging the price we do, there is no excuse for not giving the best, and that is in such limited quantities on the market that no contractor will take the chances. You see the contract has to be made before the grass is grown, and he has got to take that into account, and those are the prices we have to pay in competitive bidding. Some bids run up to nine dollars a ton, but we contracted seven or eight thousand tons at seven dollars a ton. We have to do that because of the danger of being cornered. We are different from a feed store.

"Q. You sell that hay for twenty dollars a ton, don't you? A. Yes, sir; and sell all the labor with it, too."

And in answer to redirect interrogatories propounded to him by A. H. Horton, solicitor for the complainants, the witness testified as follows, to wit:

"Q. Mr. Child, we come right back to this question he has just asked you. He said you sold hay at twenty dollars a ton. Is that twenty dollars a ton simply for the hay? A. No, sir; that is for all the expense the Stock Yards Company is put to in addition to the cost of the hay.

"Q. How many separate deliveries are made of one ton of hay? A. Well, it averages about twenty.

"Q. How much force does it take to make these deliveries? A. We have eighteen wagons with two men each in that business, just as fast as they work, three or four hours in the morning.

"Q. You spoke about insurance on hay. What did you mean by that? A. That is the hay I spoke of that we keep stored against emergencies.

"Q. How much hay do you keep stored all the time? A. About two thousand tons.

"Q. State whether it would be practicable in the operation of your yards to go upon the market here daily and buy hay. A. It could not be done at all. We could n't get the hay. The supply is too irregular.

"Q. What do you say about buying hay per ton? A. I said we pay seven dollars on these contracts for about three-fourths of our hay, and one-fourth we bought on the market; the eight-dollar figure came on this stored hay; with the insurance, buildings, etc., hauling to the yards, represents a dollar a ton.

"Q. How did you use to pay for hay? A. We have paid as high——for months or weeks?

"Q. Yes. A. We have paid for months as high as fifteen dollars a ton, and at one time we paid twenty-four dollars a ton and sold it for twenty. We have never raised the price of hay when the market went up. Almost always in the winter season the

market ranges from ten to fifteen dollars a ton. The last two years it has been exceptionally low; it is about eight dollars now.

"Q. Mr. Child, how do competitors know when to bid for hay? A. Once a year I send out notices to these different men that we have discovered in the past to be responsible men, and I presume they talk about it, and we get applications sometimes from thirty or forty people.

"Q. Do you have any stated time in which they are allowed to bid? A. It is generally about the first of June.

"Q. You have no set thirty or sixty days? A. No; it is gauged wholly by the prospects of the hay crop.

"Q. By mail, I suppose? A. Yes; by mail."

(R. 113-115.)

"Q. What additional price, then, would the owner or shipper get, the average price, on account of the hay and water furnished? A. Using the same prices as in the case of the carload, five cents per pound, it would be $1.15.

"Q. Now, let me ask you in this connection whether this feed and water are necessary for the support of the animal at that time, or merely for the purpose of filling it up and getting greater weight? A. Entirely for the purpose of filling it up and getting greater weight.

"Q. Why is that so? A. The owner has no further interest in increasing the health of the animal or its general comfort, as he is just disposing of it to other parties, and desires to get just as much for it as he possibly can, and therefore he adopts this custom.

"Q. Let me ask you again whether or no the feeding and watering is before the sale or after the sale? A. It is after the sale, but it consummates the sale; the feeding is before the weighing.

"Q. That is what I want to know directly; does the owner or shipper or his representative who sells the cattle feed the same after the sale or before? A. He does not feed them until after wards; they ar · shipped out or driven out afterwards.

"Q. Before he weighs them, is this feeding and watering done? A. This feeding and watering is all done before he weighs them.

"Q. After he weighs them, as a general thing, is there any feeding or weighing done by the owner or his representative? A. You mean the original owner or his representative?

"Q. Yes. A. None whatever.

"Q. But there is no weighing of an animal before the feeding and watering is had? A. No, sir.

By the MASTER: There is always this feeding; as soon as the stock is unloaded he gives his orders and it is brought around for the stock? A. Yes; he assumes he is going to sell, and he wants this extra weight.

"Q. He could sell, if he desired, without this feeding and watering, could n't he? A. Oh, yes.

"Q. I mean is it necessary in order to make a sale for the buyer? A. No, sir.

"Q. For whose special benefit is this feeding and watering? A. For the seller absolutely." (R. 114-116.)

"Q. You spoke this morning about stock being divided into various subdivisions in different pens; state whether or not that requires additional extra service on the part of the Stock Yards Company? A. It requires extra service, as we have our yards divided into divisions, and each division has a man in charge who keeps a thorough charge on all stock in his division, and he must be sure to give this stock all additional pens necessary to make a record of it, and be ready at all times to say where it is in case any one interested asks, and to assort it out to those who have authority to receive it from him.

"Q. Is all of that service included under the head of yardage and feed? A. Yes, sir.

"Q. You spoke about water this morning. State how that water is measured to your company. A. The water is received from the Metropolitan Water Works Company of Kansas City, Kansas, and all comes through meters and is measured to us,

and bills presented at the contract rate every month for every gallon received.

"Q. State whether or not the value of all that water and the service of furnishing it is included under the expense of yardage aad feeding. A. Every particle of that expense is included in the yardage and feeding charge.

"Q. Who has to pay for that water? A. The Kansas City Stock Yards Company.

"Q. How free is it to the shippers of stock? A. No limit whatever within reason; all that the stock can use or require is given, and the only limit we place upon it is just simply turning it loose.

"Q. In other words, not to be wasted? A. No; but everything that even fancy could suggest that the stock required for drinking or cooling in hot weather is used. Millions of gallons are used in just sprinkling—playing it over the hogs.

"Q. What is necessary in certain seasons of the year as to the additional use of water for the hogs? A. During the warm months the hogs get very hot if they are heavy and quite fat.

"Q. What is done with them as to water? A. When they seem to be, in the judgment of the owner or his representative, warm, they are permitted to put a hose on the hydrant of the pen in which the hogs are, and to play the water over the backs of the hogs to cool them; and, as I said a moment ago, this is done to the extent of millions of gallons during the warm weather; the same thing with excessively fat cattle also.

"Q. Is any pay exacted for the water so used, except as included in yardage and feed? A. None whatever."

(R. 118-119.)

Eugene Rust, General Superintendent of the Stock Yards Company, testified as follows:

"The railroads have arranged their train service in such a way as to deliver the bulk of this stock in the morning between

4 and 8 o'clock, so that there shall be as little loss as possible to the shipper in its transportation.

"Q. Generally at what time of day are the sales of stock made? A. The market is usually between eight and twelve o'clock, although the hours of the market vary; sometimes the market will open earlier and sometimes later than those hours.

"Q. What is the practice as to weighing cattle there before or after they are fed? A. They are usually fed before being weighed; fed and watered.

"Q. In feeding and watering the cattle, in what does it change their weight or increase their weight? A. In the case of cattle the feeding and watering often increases their weight from 30 to 50 pounds per head on an average. It makes the cattle look fuller and adds to their appearance and consequently to their value.

"Q. Do you have under your supervision anything to do with looking after the special amount of feed that is furnished to stock? A. I have general supervision over the feeding of stock.

"Q. State how much hay is fed to the car, what you call an ordinary feed. A. The usual practice is to feed about one hundred pounds to the car.

"Q. How many head in a car usually? A. 22 to 25 on an average.

"Q. How much do you feed to a car of hogs? A. The amount varies; usually one bushel.

"Q. Of what? A. Of corn.

"Q. How many head of hogs are there in a car? A. They will average this season of the year about 70; it varies according to the season.

"Q. How much do you feed to a car-load of sheep? A. About fifty pounds.

"Q. How many sheep in a car, generally? A. Single decks about 120; the double decks would run from 220 to 240.

"Q. How much hay did you say? A. That was to the single deck; about 100 pounds to the double deck.

"Q. Of hay? A. That is what we would consider a fair feed for a car-load, although in the case of sheep I think our average feed would run not to exceed fifty pounds to the car-load right through, double and single decks, that we actually feed to the sheep." (R. 367-368.)

An examination of the printed record, pages 113-120, and of pages 366-369, will give the court very much information as to the details of feeding live stock in the yards at Kansas City. We call attention to the fact that there are about 550 separate cattle-pens in the yards in the State of Missouri (R. 357), and that in 1896 there were received in the stock yards from the State of Missouri 204,271 cattle. (R. 863.)

Colting v. Stock Yards Co., 82 Fed. 841.

All the railroads having terminals at the yards come into the same from the Missouri side of the line, with the exception of three. (R. 360-361.)

As the feed-racks are in the pens in the stock yards, and as the hay ordered by the owner or his agent for the cattle is delivered at the pens, then it is apparent that not only is the feed sold and paid for in the State of Missouri, but a large amount thereof is actually delivered and eaten in the cattle-pens in that State. Large quantities of feed so sold and paid for in the State of Missouri are delivered for cattle coming from Missouri and other States, after they are placed in the pens in Missouri.

We supposed, before the trial in the court below, that the Attorney-General would disclaim any intention upon his part of enforcing the provisions of the act of March 3d, 1897,

against the Stock Yards Company as to the prices of hay and grain sold and paid for in the State of Missouri, or for the charges for the yarding of cattle in that State. But we were disappointed. The Attorney-General insisted then and insists now that the act applies to all the business of the Stock Yards Company, including the sale of feed, whether had in Missouri or any other State.

FOSTER, J., in his opinion, intimates that the statute regulating the prices of feed sold and paid for in Missouri are regulated by the act. He states that "the prices fixed for feed are liberal." (R. 872.) Yet the Master reports that "all of the feed is sold and paid for in Missouri." The testimony is all that way.

The opinion of THAYER, J., does not discuss the sale of feed in the State of Missouri, or the yarding wholly carried on in that State, but as the business of the company, "consisting of yarding, feeding, watering and weighing live stock," is referred to and commented upon, evidently that judge sustains the view of the Attorney-General, or did not fully examine and consider the testimony thereon. (R. 940-947.)

Cotting v. Stock Yards Co., 82 Fed. 850.

The final decree dismissing the bills, if affirmed, will permit the Stock Yards Company to incur the risks of the severe penalties denounced by the act for all hay and grain sold in Missouri, and for the yardage of cattle in that State. The transactions embracing the sale of feed and yardage in the State of Missouri out of which causes of action might arise under the

statute as construed by the Attorney-General and the court below, "are so numerous and varied that the interference of equity could well be justified upon the ground that a general decree, according to the prayer of the bills (so far as the transactions in Missouri are concerned), would avoid a multiplicity of suits and give a remedy more certain and efficacious than could be given in any proceeding instituted against the company in a court of law; for a court of law could only deal with each separate transaction involving the rates to be charged. The transactions of a single week would expose any company, questioning the validity of the statute, to a vast number of suits by shippers, to say nothing of the heavy penalties named in the statute. Only a court of equity is competent to meet such an emergency, and determine once for all, and without a multiplicity of suits, matters that affect not simply individuals," but valuable and important interests.

Smyth v. Ames, 169 U. S. 466-517.

It was said in *In re Carr*, 52 Kan. 688-690, that, "It is elementary that the statutes of a State can have no extra-territorial force."

It was said in *McCarthy v. Railroad Co.*, 18 Kan. 46, and on page 48, by the Supreme Court of Kansas, that "invariably the courts have held that the statutes of a State have no extra-territorial force beyond the limits of the State of their adoption. All laws are coëxtensive and only coëxtensive with the political jurisdiction of the law-making power."

Carlile v. Hurd, 3 Colo. App. 11.

But the proposition that the law of a State has no force beyond its territorial boundaries is so well established that no citations of authorities are necessary.

The State of Kansas cannot fix the price at which feed shall be sold in the State of Missouri; and this must be true whether the sale be made in Missouri by a citizen of Kansas to another citizen of the same State or to any other person. In the Covington Bridge case, 154 U. S. 219, it is said: "For instance, suppose the agent of the bridge company in Cincinnati should refuse to recognize tickets sold upon the Kentucky side enabling the person holding the ticket to pass from Ohio to Kentucky; it would be mere *brutum fulmen* to attempt to punish such agent under the laws of Kentucky." And in this case, suppose the feed master of the Stock Yards Company in Kansas City, Missouri, charges and collects from the owner of live stock more than one hundred per cent. advance over the cost of the feed, would it not be mere *brutum fulmen* to attempt to punish such agent under the laws of Kansas.

Again, suppose the Stock Yards Company owned and operated stock yards at St. Joseph, Missouri, and through its agent or feed master there sold to owners of live stock feed at an advance of more than 100 per cent. over the cost; would such feed master or anyone else be punishable under the Kansas statute because of such transaction? Clearly not.

But if the Kansas statute could not regulate the price at which feed shall be sold by an agent of the Stock Yards Company in St. Joseph, Missouri, it cannot prescribe the price at which

feed shall be sold by an agent of the same company in Kansas City, Missouri.

If the power to fix prices at which a commodity shall be sold in Missouri resides in the Legislature of the State of Kansas, the same power over the same transaction certainly resides in the Legislature of the State of Missouri, and the prices which either State may fix (assuming that this power exists, which we deny) are entirely within the discretion of each State. Missouri might make it a crime for the agent of the stock yards company in Missouri to sell feed at more than fifty per cent. advance over cost, while Kansas might make it a crime for the same person to negotiate the same sale at an advance of more than one hundred per cent. over cost. A sale which would be entirely lawful under the provisions of the Kansas act would subject the agent to the penalties provided by the Missouri statute, and both statoperate on the same person, at the same time, and upon the same transaction. The illustrations which have been used point out the confusion and conflict which would result from any attempt on the part of a State to regulate a traffic which takes place beyond its borders.

A corporation is clothed everywhere with the character given by its charter, and the capacity of corporations to make contracts beyond the States of their creation, and the exercise of that capacity, are supported by uniform, universal and long-continued practice. (*Land Grant Rly. Co. v. Comm'rs of Coffey County*, 6 Kan. 245; *O'Brien v. Wetherell*, 14 id. 616; *Bank of Augusta v. Earle*, 13 Pet. 519; *Cowell v. Spring Co.*, 100

U. S. 55.) Hundreds of corporations are created, not strictly local in their character, as in the instance of banks and insurance companies, all of which transact business in all sections of the country.

Railroad Co. v. Fletcher, 35 Kan. 236-244.

UNJUST DISCRIMINATION.

It will be noticed that section 5, of the act of March 3d, 1897, relating to the prices of hay and grain, prescribes that the same can be sold only at a certain per cent. above the average market price or value of such hay and grain "upon the day preceding such sale and delivery." It appears from the testimony that large quantities of hay to be sold in the State of Missouri by the Stock Yards Company are contracted for as early as June of each year. "The contract has to be made before the grass is grown." It is stored in large quantities, carefully protected in buildings, insured, etc. (R. 113-115.) During the year, hay fluctuates in the markets of Kansas City, and sometimes the Stock Yards Company has paid as high as $15 a ton. At one time the company paid $24 a ton, and sold it for $20. (R. 143.) *Yet the act complained of provides that the hay must be sold in the yard, regardless of what has been paid for it, at a price not more "than one hundred per cent. above the average market price upon the day preceding such sale and delivery."* The statute thereby fetters and unjustly restricts the Stock Yards Company in the purchase and sale of its hay, when it is considered that it is delivered in small quantities.

As shippers do and can feed their live stock upon the cars before reaching the yards (R. 788-789, 792), and as the stock is generally sold on the morning of arrival, the Stock Yards Company ought not to be discriminated against as to the prices of feed sold and delivered by it. If the Legislature may regulate the prices of feed in the yards, when the shippers of stock may buy hay and grain wherever they please and feed it to their stock in the cars before reaching the yards, then the Legislature ought to regulate the prices of feed when sold by the other hay and grain dealers of Kansas. The hay and grain sold by the Stock Yards Company is simply merchandise, and the act of 1897 unjustly discriminates against the company.

The principle announced in *Budd v. New York*, 143 U. S. 517, supporting the statute of New York of 1888, regulating "trimming" in floating and stationary elevators in that State, has no application to this case. "Trimming" is defined in the Budd case, as "shoveling grain from one place to another, which is done by longshoremen with scoops or shovels." In that case, it was said: "The purpose of the statute could be easily evaded and defeated, if the elevator owner was permitted to separate the services, and to charge for the use of his steam shovel any sum which might be agreed upon between him and the shovelers' union, and thereby, under color of charging for the use of his steam shovel, to exact of the carrier a sum for elevating beyond the rate fixed by the statute." In that case, the shoveling was a necessary part of the elevating. Every

person patronizing or using a floating elevator at Buffalo, which was primarily a boat, was compelled to have trimming done,—that is, his grain shoveled. He could not do as the stock shippers sending their stock to the stock yards may do. They may buy or refuse to buy hay and grain in the yards.

The Master reports, in Finding No. 36, that "*frequently shippers purchase hay and grain from outside parties, and feed their live stock in the cars before reaching the yards, in order to avoid the payment of the charges made by the company.*"

(R. 73.)

If the shippers desire, they can buy their hay and grain elsewhere, and feed upon the cars transporting their stock before reaching the yards, where their stock is sold on arrival. In the Budd case, "trimming" was a necessary part of the "elevating." "Feeding" the stock upon the cars or in the yards is not a part of "the yardage." Hence, the Budd case and this can be distinguished.

So much for feed sold and fed in Missouri.

INTERSTATE COMMERCE.

It remains to consider the case of hay and grain sold and paid for in the State of Missouri, but delivered and fed in Kansas, which, in consideration of the purchase price received in Missouri, the company transports and delivers at the place or places designated by the purchaser. The case is as follows: The Stock Yards Company, for a valuable consideration, pursuant to a contract, transports upon its own vehicles hay and

grain from the place of its sale in the State of Missouri to a point within the State of Kansas designated by the purchaser.

But transportation for hire of either persons or property from one State to another is interstate commerce.

In the Covington Bridge case, 154 U. S. 219, it is said:

"If . . . interstate commerce means simply commerce between the States, it must apply to all commerce which crosses the State line, regardless of the distance from which it comes or to which it is bound before or after crossing such State line. In other words, if it be commerce to send goods from Cincinnati in Ohio to Lexington in Kentucky, it is equally such to send goods or to travel in person from Cincinnati to Covington."

If it would be interstate commerce to send goods from St. Joseph in Missouri to Kansas City in Kansas, it is equally interstate commerce to send hay and grain from Kansas City in Missouri to Kansas City in Kansas.

Gibbons v. Ogden, 9 Wheaton, 1.
Welton v. Missouri, 91 U. S. 275.
County of Mobile v. Kimball, 192 U. S. 691.
State Freight Tax, 15 Wallace, 232.
Wabash Ry. Co. v. Illinois, 118 U. S. 557.
Gloucester C. Co. v. Penn., 114 U. S. 196.

All of the feed served to cattle in the Kansas yards west of the State line, to all southern or quarantine cattle, to all hogs, and to all sheep, is transported by the Stock Yards Company, for a valuable consideration, from the place of its sale in Missouri to the place of its distribution by order of the purchaser in the State of Kansas.

In the case of *La Loup v. Mobile,* 127 U. S. 640, it is said:

"But it is urged that a portion of the telegraph company's business is internal to the State of Alabama and therefore taxable by the State. But that fact does not remove the difficulty. The tax affects the whole business without discrimination. There are sufficient modes in which the internal business, if not already taxed in some other way, may be subjected to taxation without an imposition of a tax which covers the entire operations of the company."

And in the syllabus in the same case the court lay down this principle:

"A general license tax on a telegraph company affects its entire business, interstate as well as domestic or internal, and is unconstitutional."

The Kansas act under consideration is a general regulating act. No attempt is made by its terms to restrict its application to feed bought, sold, paid for and delivered wholly within the State of Kansas, or to yarding wholly in that State.

In *Smyth v. Ames,* 169 U. S. 466-452, Mr. Justice HARLAN, speaking for this court, remarked:

"It is only rates for the transportation of persons and property between points within the State, that the State can prescribe; and when it undertakes to prescribe rates not to be exceeded by the carrier, it must do so with reference exclusively to what is just and reasonable, as between the carrier and the public, in respect of domestic business. The argument that a railroad line is an entirety; that its income goes into, and its expenses are provided for out of, a common fund; and that its capitalization is on its entire line, within and without the State,—can have no application where the State is without authority over rates on its entire line, and can only deal with local rates

and make such regulations as are necessary to give just compensation on local business."

All of this applies to this case.

Merely because the Stock Yards Company is a corporation of Kansas, the Attorney-General contends that the act of March 3d, 1897, regulates its charges and prices in the State of Missouri, the same as if the hay and grain sold in that State and the yarding had in that State were transactions in Kansas.

If the perpetual injunction prayed for is not granted upon the pleadings and proof as to the hay and grain sold and paid for in Missouri, and the yarding of the company in that State, then the Attorney-General may in a single day commence innumerable civil and criminal prosecutions involving transactions in the State of Missouri, that will harass, annoy, cripple and almost confiscate the business of the Stock Yards Company. The company and its stockholders would be deprived thereby of their property without due process of law,—indeed, without any law regulating the transactions referred to in the State of Missouri, and would be denied in Kansas the equal protection of the laws.

THIRD POINT.

THE FINDING OF THE MASTER AND THE COURT BELOW OF THE VALUE OF THE PROPERTY OF THE KANSAS CITY STOCK YARDS COMPANY, OWNED AND OPERATED BY IT FOR STOCK-YARDS PURPOSES, WAS FOUNDED UPON INCOMPETENT AND INSUFFICIENT TESTIMONY. THE PROPERTY WAS VALUED AS A DEAD STRUCTURE—NOT AS A UNIT OR SYSTEM, OR AS A LIVING AND GOING CONCERN.

It was recently decided by this court in the case of *San Diego Land & Town Co. v. City of National City*, that—

"The reasonable value of property, rather than its original cost, is to be taken as the basis of calculation in determining whether rates fixed under legislative authority constitute a fair compensation for the use of the property, so that the owners are not deprived of their property without due process of law." (Vol. 19, Sup. Ct. Rep. 804-811; No. 16, Adv. Sheets U. S. Sup. Ct. 861.)

In that case, Mr. Justice HARLAN remarked:

"The basis of calculation suggested by the appellants is, however, defective, in not requiring the real value of the property, and the fair value in themselves of the services rendered to be taken into consideration. What the company is entitled to demand, in order that it may have just compensation, is a fair return upon the reasonable value of the property at the time it is being used for the public."

Therefore, it was of supreme importance to the complainants in this suit that "the real value of the property used and operated by the Stock Yards Company" should have been prop-

erly ascertained by the Master. This was not done. He segregated the property in parts, and valued it as thus divided into parts: the personal property at $307,077.25; the structures and other improvements, apart from the real estate, at $1,480,000; the land, "divested of all improvements," at $3,600,626: aggregating $5,388,003.25.

(Findings Nos. 43, 44, 45 and 46, of Master, R. 77.)

He refused to report "the real value of the property" as a unit, or as an entirety, or as a plant designed for a specific object. Further than this, the testimony introduced upon the part of the Attorney-General as to the value of the property gave estimates thereof as if divided into separate parts, not as a whole, or as a system or plant. It was the contention of the appellants before the Master and in the court below that to ascertain the real value of the property of the Stock Yards Company, it should be treated and appraised as a unit, as a completed system of stock yards, with all of its important connections, and as a live, going concern. (R. 57.)

Adams E. Co. v. Ohio St., 165 U. S. 194; 166 U. S. 185-225.

National Water Works Co. v. Kansas City, 62 Fed. 853.

The Attorney-General denied the correctness of this rule, and insisted that "the real value of the real estate of the company is to be determined by considering it as a body of naked land, upon the open market, subject to purchase and sale for all purposes for which a demand may exist," and that the value of the only property of the company to be considered in this suit

is its physical property. The Master decided against our contention, and then, upon incompetent and insufficient testimony, reported the land, divested of all improvements, at $3,600,626 only. We contended before him and before the court below, and earnestly insist now, "that this is an unfair and an improper mode of reaching the value of the real estate or property of the company; that it destroys the plant as a living, going business, and then values its land and other property in detail, in parts, not as a whole or a completed system of stock yards."

Foster, J., in passing upon the preliminary injunction, noticed the palpable error of the Master in omitting two tracts of real estate, containing respectively 8.028 acres and 12.122 acres owned by the company, and therefore added to the valuation of the land as made by the Master, $126,140, making the aggregate value of the property $5,514,143, as appraised in separate parts only. (R. 862, 872.)

Thayer, J., in the opinion handed down at the time of rendering the final decree, assumed the real value of the property of the company used for stock-yards purposes, as fixed by the Master, at $5,388,003.25. (R. 944.)

In this connection, it ought perhaps to be said in justice to Thayer, J., that he handed down his opinion in a few days after hearing the arguments upon the Master's report, the exceptions thereto and the voluminous testimony on file, without having sufficient time to fully examine the same—evidently considering that the court below was merely a medium through which this case would reach this court. *He observed in his*

opinion that "The great importance of the questions involved in these cases will doubtless occasion an appeal to the Supreme Court of the United States, where they will be finally settled and determined," and of his own motion made an order "restoring and continuing in force the injunction heretofore granted," to be continued until the appeal should be heard and determined by this court." (R. 946.)

As before stated, it is admitted that the structures, buildings, and all other improvements, separate from the real estate, and without considering their value in combination and from use, (which ought to be recognized in estimating the real value of the property of the company,) are of the value of $1,480,000.

The principal witnesses called as experts by the Attorney-General to prove the value of the real estate used by the defendant company in its stock yards were E. S. Merrill (R. 605), C. D. Parker (R. 629), E. F. Allen (R. 657), R. E. Cable (R. 668), C. W. Whitehead (R. 692), and William S. Beard (R. 708). The Attorney-General interrogated the so-called experts as to the value of the various tracts of "naked land," about which they gave testimony. (R. 607, 630, 680.) Then again his inquiries would be, "How much is the land worth per acre?" (R. 631, 680, 694, 711.) At other times his inquiries would be, "What is the land worth per acre without respect to the improvements?" (R. 659.)

Upon cross-examination, E. S. Merrill, the so-called expert, testified as follows concerning tracts of land referred to by him in his direct examination:

"Q. What is the land worth in this tract, marked 'E,' concerning which you have testified, lying east of Water street, in its present condition, just as it stands to-day? A. I don't know.

"Q. Then, as I understand your testimony, you are not testifying about the value of the property as it stands to-day in its present condition? A. Not improved property.

"Q. You can answer that question by yes or no. You are not testifying of the value of 'E' as it stands to-day? A. No."

(R. 621.)

"Q. Now, then, in making up your value, with reference to the tract marked 'E,' you consider that as naked-acre property, without any improvements or without any business at all? A. Yes, sir.

"Q. That is the fact, is it? A. Yes, sir."

(R. 619.)

Upon cross-examination, C. D. Walker, the so-called expert, testified as follows concerning tracts of land referred to by him in his direct examination:

"Q. You don't know anything about the value of the use of that land for stock-yards purposes? A. No, sir."

(R. 632.)

"Q. If another stock yards company should come in, do you think it could procure as desirable a location in the bottom? A. I don't think it could."

(R. 636.)

"Q. Now state, if you can, what is the actual present value of the land for stock-yards purposes? A. I don't know."

(R. 645.)

Upon cross-examination, E. F. Allen, the so-called expert, testified as follows concerning tracts of land referred to by him in his direct examination:

"Q. Do you know the present value of the use of this land by the Stock Yards Company? A. What they are worth to the Stock Yards Company?

"Q. Yes, sir. A. No, sir."

(R. 666.)

"Q. In making your estimates of value, you were not influenced by the value of the use to which the lands were put by the company? A. No, sir.

"Q. Not at all? A. No, sir."

(R. 666.)

Upon cross-examination, R. E. Cable, the so-called expert, testified as follows concerning tracts of land referred to by him in his direct examination:

"Q. Have you sold any real estate in the vicinity of that tract? A. No, sir.

"Q. Have you bought any? A. No, sir."

(R. 679.)

"Q. You have never had any transactions of buying or selling property around there? A. No, sir."

(R. 679.)

"Q. What, in your opinion, is that tract 'E' worth just as it is to-day? A. For general purposes, or for the purposes for which it is being used?

"Q. For the purposes for which it is being used? A. Certainly, I could not answer that question.

"Q. You don't know? A. No, sir."

(R. 683-684.)

Upon cross-examination, C. W. Whitehead, the so-called expert, testified as follows concerning tracts of land referred to by him in his direct examination:

"Q. What is this property marked 'A,' 'B,' 'C,' 'D,' and 'E' worth for stock-yards purposes? A. I don't know.

"Q. What is the value of this property for railroad purposes? A. I don't know.

"Q. What is the value of this property for packing-house purposes? A. I don't know anything about the packing-house business.

"Q. What would be the value of that property for packing-house purposes? A. I have stated, I believe, that I don't know."

(R.696-697.)

Upon cross-examination, the so-called expert William S. Beard testified as follows concerning a tract of land referred to by him in his previous examination:

"Q. Have you had any transactions of purchase or sale of lands in the vicinity of 'C' in the last five years? A. No, sir.

"Q. Have you had any conversations with anybody who did have transactions in the purchase and sale of lands in the vicinity of 'C' within that time? A. Yes, sir.

"Q. With whom did you have any such conversation? A. Just now I could not name anybody but Mr. McAlpine, I think.

"Q. Have you had any conversation with him in the last five years? A. No; that was more than five years ago.

"Q. Do you know of any person with whom you have talked who has bought or sold property in the vicinity of 'C' within the last five years? A. I don't think I could name anyone."

(R. 710-711.)

Afterwards, Mr. Beard said that he had condemned rights of way through the premises within five years, one within five years and the other within six years, (previous to the time of giving his testimony.) (R. 710.)

Mr. Beard was objected to by the complainants below upon the ground that he was not qualified as an expert to give testi-

mony in regard to the land. This objection was overruled. (R. 710-711.)

The testimony of Mr. Whitehead as to the value of land per acre was objected to by the complainants, as being incompetent, irrelevant and immaterial, and also because the witness was not qualified to answer. The objections were overruled. (R. 964.)

Mr. Cable was objected to for incompetency as an expert by the complainants, but the objection was overruled. (R. 679.)

Upon cross-examination, the solicitors of the complainants asked Mr. Allen the following question:

"Q. Mr. Allen, assuming that the value of the improvements on the 139 acres concerning which you have been testifying is $1,600,000, are you able to state what that property is worth for use by the Stock Yards Company?"

This was objected to on the ground that it was incompetent, irrelevant and immaterial, and the objection was sustained. Thereupon, the solicitors of the appellants offered to prove by this witness that he "did not know the value to the Stock Yards Company of tracts A, B, C, D and E, about which he had testified." This was held incompetent, and the testimony was not admitted.

The testimony of Mr. Parker was also objected to, and the objection overruled. (R. 631.)

The Attorney-General did not prove or offer to prove by any witness introduced by him the value of the property of the Stock Yards Company as a unit, or a completed system, or as an operated plant, or as a living, going concern. Therefore, we

filed our motion to strike out all of the testimony of the so-called experts introduced by the Attorney-General, valuing the property of the Stock Yards Company used for stock-yards purposes in segregated parts only, and the real estate "as a body of naked land," destitute of improvements. (R. *1619.*)

This was overruled, and the Master in his report valued the land "as divested of all improvements," and also all other property of the company, by segregating the same into parts and placing a value on each segregated part. (R. 77.)

In our exceptions to his report, we particularly called the attention of the court below to the fact that the Master had not regarded the property of the Stock Yards Company as a unit, or as an entirety, or as a plant designed for a specific object, and insisted then, as we insist now, that the value of the property should have been estimated not in parts, but as a whole with its important connections. (R. 852.) 860.

The findings of the Master as to the real value of the property of the Stock Yards Company which have been followed by the court below in the decree rendered, and in the opinion handed down by THAYER, J., should be set aside, because the Master and the court below passed upon the value of the property upon incompetent and insufficient evidence. The findings and judgment rendered are clearly in conflict not only with the weight of the testimony, but with all of the competent testimony. This will be referred to hereafter.

Such testimony as we have referred to and commented upon must be rejected by this court in the consideration of this case

upon this appeal, because the same was irrelevant. It did not prove the reasonable value of the property of the Stock Yards Company, nor furnish any intelligent basis upon which the real value of all the property could be determined.

Where property has been improved for carrying on an especial business, and such business in fact enhances the value of the site, this fact may be considered in estimating the actual or market value.

The inquiry should be what, for its availability for valuable uses, the property is worth. Lands or other property must be valued in the market for the uses for which they are applied or can be applied. The inquiry in this case must be, What is the stock-yards property worth in the market, viewed not only with reference to the uses to which it is at the time applied, but with reference to the uses to which it is plainly adapted? In this case, the adaptability of the property in controversy for stock-yards purposes is an important circumstance, which the stockholders have the right to insist upon as an element in estimating the value of the lands and other physical property of the company.

Little Rock & F. S. R. Co. v. McGehee, 41 Ark. 202; 20 Am. & Eng. R. R. Cases, 82.

Mississippi & Rum River Boom Co. v. Patterson, 98 U. S. 403.

King v. Minneapolis W. R. Co., 32 Minn. 224; 17 Am. & Eng. R. R. Cases, 93.

In the last case, it was said that "When property is taken for public uses, the owner is entitled to its market value for the use to which it may be most advantageously applied, and

for which it would sell for the highest price in the market; that any evidence is competent, and any fact is proper to be considered, which legitimately bears upon the market value of the property; and that where the property has been improved for a special purpose, for which it is especially suited, (as in this case, for the manufacture of plows,) if the fact that the business has been thereon established and in operation has enhanced the market value of the property as a site for carrying on such business, it is proper to take this fact into consideration." The court said:

"We think it may be stated as elementary that a person is entitled to the fair value of his property for any use to which it is adapted, and for which it is available, and for which it may be sold. He is entitled to the value of his property for any use to which it may be applied, and for which it would ordinarily sell in the market, whether that use be the one to which it is presently applied or some other to which it is adapted. It is, we think, equally true that any evidence is competent and any fact is proper to be considered which legitimately bears upon the question of the marketable value of the property. In this case, evidence was introduced tending to prove that the fact of a business having been established and carried on on the premises for so long a time materially increased the market value of this property. If this was the fact, it was competent to prove it; and, if proved, we cannot see why it was not proper to take into consideration in estimating the value. Who can say that this circumstance would not affect its value—that is, what a purchaser would ordinarily be willing to pay? *When we speak of the market value of property as being what purchasers generally would pay for it, we do not mean what men would pay who had no particular object in view in purchasing and no definite plan as to the use to which to put it.* The owner has a

right to its value for the use for which it would bring the most in the market. This property was expressly built for a plough factory, and was especially suited for such use; and it is not unreasonable to suppose that a purchaser would give more for it than he would if the business had been suspended for a time, or had never been established there."

The Master, in attempting to give an estimate of the value of the property of the Stock Yards Company, has wholly ignored the controlling decisions that "property improved and used for a special business must be valued in the market for the use to which it is at the time applied, (if that is the most available use,) or with reference to the use to which it is plainly adapted"; that the property of a corporation like the Stock Yards Company must be regarded in the aggregate as a unit and entirety, as a plant designed for a specific object, and its value cannot be estimated in parts, but must be taken as a whole.

Adams Express Company v. Ohio State, supra.

Mr. Chief Justice FULLER *observed in that case: "The unit is a unit of use and management." He further remarked: "There is the same unity in the use of the entire property for the specific purpose, and there are the same elements of value arising from such use."*

As Mr. Justice BREWER aptly says in the same case:

"Whenever separate articles of tangible property are joined together, not simply by a unity of ownership but in a unity of use, there is, not infrequently, developed a property, intangible though it may be, which in value exceeds the aggregate of the value of the separate pieces of tangible property."

The additional value created by the connections made and

now existing between the plant and the several railroads having connections, terminals and switches in and about the stock-yards, and with the several beef- and pork-packing establishments communicating with and adjoining the plant, and including the contracts, arrangements and connections with the Stock Yards Company of such railroads, packing establishments, and the exporters and buyers of live stock engaged as dealers in the purchase of live stock at the market created and maintained by the Stock Yards Company, which actually supply and increase its earnings, is not represented by the valuation of the property by the Master or the court below.

The Master in his report valued the present property of the Stock Yards Company as a dead structure, not a living and going business. This ought not to have been done.

National Water Works v. Kansas City, supra.

No more reason is perceived for limiting the valuation of the property of the Stock Yards Company to personal property, structures, pens, fences, buildings, viaducts, and other improvements, and the naked land, than that of railroad, telegraph, sleeping-car and express companies to road-beds, rails and ties, poles and wires, cars, wagons, horses, lands, and buildings. As to all such corporations, the valuation as decided by this court, includes the proportionate part of the value resulting from the combination of the means by which the business is carried on, "a value existing to an appreciable extent throughout the entire domain of operation."

Adams Express Co. v. Ohio State, supra.

Sanford v. Poe, 69 Fed. 546.
State v. Jones, 51 Ohio State, 492.

Therefore, the Master destroyed the value of the plant of the Stock Yards Company by dividing it into parts, as personal property, as improvements on its real estate, and as naked real estate, and after thus destroying such plant, unjustly fixed the value of the property at $5,388,003.25, without regard to its railroad and packing-house connections,—being about one-half of the real value of the property necessarily used for stock-yards purposes.

If the testimony of the so-called experts introduced by the Attorney-General had been supplemented by further testimony as to the real value of the property of the Stock Yards Company as a unit or completed system, then perhaps the testimony offered by him might have been worthy of some consideration, but the necessary supplemental testimony was not presented upon the part of the Attorney-General.

The court below followed the improper valuation of the property made by the Master, and as this valuation is not only against the weight of the testimony, but against all of the testimony competent to be considered in fixing the real value of the property of the Stock Yards Company as a unit or completed structure, the valuation made by the Master and the court below must be set aside, and a new valuation be given to the property by this court, as the testimony contained in the record demands and justifies.

The real value of the property will next be considered by us in the examination of the testimony.

FOURTH POINT.

THE REAL VALUE OF THE PROPERTY OF THE STOCK YARDS COMPANY IS FROM $9,000,000 TO $10,000,000.

It appears from the testimony that the reproduction of the plant of the Stock Yards Company at the present time would cost *"anywhere from eight to ten millions of dollars."* (R. 194.)

This is the testimony of Charles F. Morse, the Vice-President and General Manager of the company. He is a gentleman of lofty character, great executive ability, and intimately acquainted with the financial affairs and the business interests of the company. He has been connected with various companies operating stock yards in Kansas City since 1879, and has been the General Manager of the Stock Yards Company since it commenced active operations, on January 1st, 1884. (R. 183-186.)

It was said by Mr. Justice BREWER, speaking for the United States Circuit Court of Appeals of the Eighth Circuit, in *National Waterworks Co. v. Kansas City,* 62 Fed. 853:

"Nor would the mere cost of reproducing the waterworks plant be a fair test, because that does not take into account the value which flows from the established connections between the pipes and the buildings of the city. It is obvious that the mere cost of purchasing the land, constructing the buildings, putting in the machinery and laying the pipes in the streets,—in other words, the cost of reproduction,—does not give the value of the property as it is to-day."

(See page 865.)

This language of the learned Justice is particularly applicable to the value of the plant of the Stock Yards Company, in view of the connections existing between its plant and the several railroads having connections, terminals and switches in and about its yards, and between the several beef, mutton and pork-packing establishments communicating with and adjoining the yards, including the contracts, arrangements and connections of the company with the railroads taking shipments, the exporters and buyers of live stock. Mr. Morse also testified:

"Q. State now what amount of actual money has been put into the stock yards and improvements. A. You mean the cash expenditures?

"Q. Yes. A. I will answer the question.

"Q. State the actual money. A. $6,137,398—the land and the improvements and the cash inventories of feed, etc., in addition to the land and the improvements.

"Q. In addition to the land and improvements which you have, just state what other properties the company has for its use, without going into detail. A. It has always on hand large stocks of hay and grain, horses, carts, wagons, harness, tools, hose, office furniture, and all kinds of supplies; everything that is used in any way about the yards,—lumber in large quantity usually, fence posts; usually have a considerable quantity of paving-brick.

"Q. What do those items amount to? A. On the 31st of December, 1896, to $315,377.25.

"Q. Your bank account—where is that kept? A. Well, we keep a considerable balance here always—have to; and we keep an account in Boston, too—keep a considerable amount there. We draw on it if needed from time to time.

"Q. Who is the financial agent in Boston? A. Charles Merriam."

(R. 193-194, 318.)

George T. Williams constructed for the Baltimore & Ohio Railroad Company, stock yards at Richmond, Indiana; was connected with the West Madison Street yards in Chicago in 1855 and 1856; was the cashier and bookkeeper at the Lake Shore yards in that city in 1857, and the secretary of the Union Stock Yards & Transit Company, of Chicago, for twenty-eight years; at times he assisted the superintendent in his duties, and in the absence of the president attended to his business. (R. 433-434.)

Mr. Williams testified that from his knowledge of the Kansas City Stock Yards, the value of its property, "considered as a unit or entirety, as a completed system of stock yards, and as a going concern, assuming the tangible property to be worth from $5,000,000 to $7,000,000" is *"three or four million dollars over its capitalization."* (R. 440.)

Donald McNeal Palmer, who has been the general manager and superintendent for the last fourteen years of the Union Stock Yards at St. Louis, Missouri, testified that, assuming the physical property of the Kansas City Stock Yards Company was worth from $5,000,000 to $7,000,000, from his knowledge of the business, the *"plant would be worth from nine to twelve million dollars."* (R. 450, 453.)

William N. Babcock, who has been engaged in the stock-yards business for eight years, and is the general manager of the stock yards at Omaha, Nebraska, testified that the value at the present time of the plant of the Kansas City Stock Yards Company, considered as a unit or entirety, as a system

of stock yards and as a going concern (assuming the value of the tangible property to be from five to seven millions of dollars), is *"at least thirty-three and one-third per cent. more than that."* (R. 466, 471.)

This testimony, as we read the record, is uncontradicted. Clearly, the real value of the stock yards is over $9,500,000.

(See also the testimony of Harry P. Child, the Assistant General Manager of the Stock Yards Company. R. 178.)

THE AMOUNT FOR WHICH THE STOCK OF A CORPORATION CAN BE BOUGHT AND SOLD IS THE REAL VALUE

In view of the decisions of this court in *Adams Express Company v. Ohio State*, 165 U. S. 194-255, and *Adams Express Company v. Ohio State*, 166 U. S. 185-225, it is important to ascertain the amount for which the stock of the Stock Yards Company can be bought and sold.

The Master reported that there have been frequent market quotations of the stock in Kansas City and Boston, which have ranged from $110 to $141 per share. *The last quotation, in January, 1897, was $132 per share.* (R. 78.)

Mr. C. F. Morse testified *"that the average value of the stock in 1896 was $136 a share."* (R. 344, 314.)

He also testified:

"A. The sales of stock during 1896 were from $134 to as high as $141. They varied a little, month by month.

"Q. What would you say was the average market value of the stock during that period? A. Well, in January, 1896, the market value was from 140 to 141; in March of the same year it was from 139½ to 140½; April, 139½ to 141; June, 135 to

137; July, 134 to 137; November, 132 to 135; January, 1897, the last figures of which I have any knowledge, 133 to 134; from then until March I have no quotations.

"Q. Have you calculated what the average would be prior to March 12, 1897? I think it would average somewhere about 136 to 137; I haven't made any exact figures, but the lowest mark was, for a short time, 132 about election time, but for the greater part of the time it was about 137.

"Q. Do you know of the market value during each of the times you have testified about? A. Yes, I know of sales along from time to time."

(R. 763.)

He further testified:

"By the MASTER: I did not catch that answer that the Colonel had given to Mr. Hite. If that is true, then on the 12th day of last March the market value of the stock which had been issued by the company was $136 per share of $100. A. I think that would have been true—possibly not on the 12th of March, but at any time for twelve months before the 12th of February. There were no sales that I know of from February 1st to March 12th. For twelve months prior to February 1st it ranged from 135 to 140, and I don't believe the stock could have been bought as an entirety for less than that, and, according to the usual experience in such cases, it would have cost more. That no one would have sold any considerable amount for less than $136, I feel absolutely sure.

"Q. You think the entire stock could have been sold at that rate at that time? A. Yes, sir.

"Q. And the entire plant could have been sold at that time for in the neighborhood of nine and a half millions? A. Yes, sir. I will give you an instance why I think that is so: A year or so before that time there was an effort made by parties, claiming to represent a foreign syndicate, who came here and made a careful investigation of the plant, of its capacity, and the amount of business it was doing, and those gentlemen, who

were to take charge, were going to recommend the purchase of the plant at that time at $125 a share, as the price they could get the syndicate to pay. That was suggested, and I know of a great many stockholders who did not listen to it at all; so I gather from that that $125 a share would not have tempted them at all."

(R. 354.)

(See also testimony of George T. Williams, R. 433; Donald McNeal Palmer, R. 450; William N. Babcock, R. 466; and Harry P. Child, R. 177-178.)

Mr. Justice BREWER observed in the case of *Adams Express Company v. Ohio State Auditor, supra,* that—

"The value which property bears in the market, the amount for which its stock can be bought and sold, is the real value. Business men do not pay cash for property in moonshine or dreamland. They buy and pay for that which is of value in its power to produce income or for the purpose of sale."

Within the foregoing authorities, the value of the property of the Kansas City Stock Yards Company, used and occupied by it in the transaction of its business as a completed structure or unit, including its franchises and good-will, its contracts, arrangements and connections referred to, and the plant or system as a going concern, this court must determine its value to be over $9,500,000.

The intangible property of a corporation, and its franchises exercised in connection with the tangible property which it holds, create a substantive matter of value. If the rule established by the Supreme Court be applied to the present value of the property of the Stock Yards Company, then the court must find its value to have been, during the year 1896, $10,020,480,

because at that time there was outstanding $7,368,000 of stock of the company, the market value thereof being $136 per share of $100 par value. There has been no change since Jan. 1, 1897, in the amount of the business, physical conditions, connections or efficiency of the plant of the Stock Yards Company, considered as an entirety and going concern. It was at the commencement of these suits, and is at this time, in the same condition practically as it was in 1896.

In February, 1897, after the session of the Legislature of Kansas for that year had convened, and after a bill had been offered to reduce the charge of yardage and the prices of feed in stock yards, the stock sold at $115 per share. If the value of the stock is calculated at $132, and $600,000 is deducted for outside holdings, the value of the property, used for stock-yards property, would be $9,115,000. The report of the Master that the value of the good-will or business of the Stock Yards Company is "about $780,000," is unfair and unjust. The value of the good-will, according to the evidence, must be estimated at from $2,000,000 to $3,000,000 or more.

Testimony of C. F. Morse, R. 194.
Testimony of H. P. Child, R. 176-178.
Testimony of George T. Williams, R. 440.
Testimony of W. N. Babcock, R. 466, 471.
Testimony of Donald M. Palmer, R. 450-453.

That good-will is the subject of value and price, see—

14 American Law Register, N. S., 8, art. "Good-will."
Wedderburn v. Wedderburn, 28 Beav. 84.
Hitchcock v. Coker, 6 Ad. & Ellis, 438.

In *Succession of Journe*, 21 La. Ann. 391, it appears that in New Orleans the public market-stalls are leased out by the city through an officer called the "farmer"; that there exists a custom of transferring by consent, generally of the farmer, the use of market-stalls, and with that transfer the lessee of the stall sells its good-will, which is that run of custom which the transferrer has attained from the patronage of his friends and the reputation he has acquired. It was held that the administratrix of a deceased owner of such a stall was chargeable on her inventory with the sum for which, after her husband's death, the good-will of his stall had been sold.

It is said in Cook on Stock and Stockholders, § 20:

"A corporation may receive in payment of its shares of stock any property which it may lawfully purchase. In general, it may receive any consideration which is suitable and applicable to the purposes for which the corporation was organized. A railroad corporation may receive payment in contract work, right-of-way, or in any kind of material or labor applicable to its construction. *A manufacturing corporation may receive payment in the good-will of a business or the stock in trade.* Land may be taken in consideration when the corporation would be allowed to purchase the same. Promissory notes may also be taken under the corporate power of giving credit and extending the time of the payment of debts."

See, also, as deciding that good-will is property the same as money or personal or real property, *Washburn v. National Wall Paper Company*, U. S. Circuit Court of Appeals, 2d Circuit, vol. 14, Nat. Corp. Rep. (June 17, 1897,) pages 511-513;

State v. Jones, 51 Ohio State, 492, 512, 513; *Adams Express Co. v. Ohio State, supra; Sanford v. Poe, supra.*

It therefore appears from the testimony that the value of the property of the Stock Yards Company, which the Master fixed at $5,388,003.25, is nearly twice that sum, being between $9,000,000 and $10,000,000.

The following statement in the opinion of THAYER, J., to wit—

"It is fair to infer that a large amount of stock has been issued by the company, not so much with reference to the actual value of its physical property, as with reference to the income which it could be made to produce, and the dividends it could be made to pay"—

is both incorrect and misleading. (R. 944; 82 Fed. 854.)

Mr. Morse testified: "There has been no stock issued except it represented the actual cash investment in money, with the exception of $1,437,882. That amount represented the increased value of the land." (R. 215-216.)

THAYER, J., in his opinion, stated that—

"A prime factor in determining whether the prescribed rates are reasonable or confiscatory, is the valuation which shall be placed on the property of the Stock Yards Company which is used for the purpose of yarding and feeding stock." (R. 943.)

But he added the following:

"With reference to that subject, it may be said that different methods of estimating the value of property may properly be employed, when it is valued for different purposes." (R. 943.)

If under the Adams Express cases property of corporations may be assessed and taxed as therein declared by this court,

it ought not to be asserted successfully that the real value of the property of the Stock Yards Company is less than that at which the State of Kansas might assess it for taxation. It is inconceivable that the real value of the property of a corporation should be valued less than the property might be assessed for taxation. That the taxing authorities have not assessed the property of the Stock Yards Company in accordance with the statutes of the State, does not militate against our argument, or tend in any way to lessen the real value thereof. It is admitted that the personal property of the Stock Yards Company is $1,480,000. The real estate of the corporation is not required to be listed for taxation by the company. That is a duty wholly performed by the tax assessor. If the tax assessor values property for taxation at a sum very much less than its actual value, or omits all valuation, the owner is not responsible. He performs his duty when he pays the taxes assessed.

In this connection, we call the attention of the court to finding No. 43 of the Master, page 77 of the record, fixing the value of the land, divested of all improvements, used by the Stock Yards Company for stock-yards purposes only, at $3,600,626, which amount seems to have been accepted as correct by the court below. This finding of the Master as to the value of the naked land is against the great weight of the testimony. The Master in the finding remarked that the witnesses testifying concerning the value "of the real estate owned and used by the defendant company for stock-yards purposes" are *"of appar-*

ently equal intelligence, fairness, and means of information." (R. 72.)

Yet the Master, in making his finding of the value of the naked real estate, ignored the testimony of twelve disinterested expert witnesses who testified on the part of the appellants. Their names are as follows:

J. W. Dalton, R. 515.
J. W. Ferguson, R. 480.
R. J. Hinton, R. 575.
T. J. Haire, R. 594.
Albert Marty, R. 562.
E. H. Phelps, R. 566.
C. W. Schiller, R. 580.
J. W. Tourtellot, R. 494.
J. B. Welsh, R. 501.
C. K. Wells, R. 524.
A. A. Whipple, R. 591.
D. S. Young, R. 527.

The testimony of these witnesses fixes the value of the tracts of land referred to in said finding at the following prices per acre:

	Main Yards in Missouri, 41.708 acres.	*Main Yards in Kansas, 40.659 acres.*	*Quarantine Yards, 13.458 acres.*	*North Yards, 14.900 acres.*
	Per acre.	Per acre.	Per acre.	Per acre.
J. W. Dalton	$62,500	$62,500	.....	.....
J. W. Ferguson	.....	.....	.....	$32,500
R. J. Hinton	65,000	.....	.....	55,000
T. J. Haire	62,500	.....	.....	.....
A. Marty	50,000	50,000	.....	40,000
C. F. Morse	56,000	56,000	$12,000	30,000
E. H. Phelps	60,000	55,000	16,000	40,000
C. W. Schiller	.....	.....	.....	47,500
J. W. Tourtellot	55,000	.....	.....	34,200
J. B. Welsh	60,000	40,000	15,000	30,000
C. K. Wells	.....	.....	.....	31,250
A. A. Whipple	60,000	37,500	15,000	25,000
D. S. Young	55,000	75,000	16,500	50,000
Average	$58,600	$53,714	.....	$37,768

The testimony introduced at the hearing before the Master, concerning the value of the land for stock-yards purposes, conclusively established the value at about $6,000,000. The great preponderance of the testimony given before the Master, even as to the actual market value and selling price of the land described by him in the finding, divested of all improvements, was the sum of $5,277,213.

The Master, in reaching his estimate of the value of the naked land owned and used by the Stock Yards Company for stock-yards purposes, wholly omitted to value a tract of land, shown on Exhibit Z as cut by James street, of the actual market value of about $65,000, and of a tract of land marked on Exhibit Z as "D," of the actual market value of about $41,000, and also of a tract of land shown on Exhibit Z as a part of "E," of the actual market value of more than $85,000, and also of seven small tracts of land, designated on Exhibit Z as "e," then of the actual market value of more than $85,000. Two of the omitted tracts, valued at $126,140, FOSTER, J., added to the property actually used by the company. (R. 872.)

The Master reported in the finding the value, divested of all improvements, of the main yards in Missouri, consisting of 41.708 acres, at $45,000 per acre, aggregating $1,876,860. He should have reported the value of the tract, divested of all improvements, at not less than $58,600 per acre, aggregating $2,369,014, inasmuch as fourteen witnesses, whom the Master in the finding states to be of "equal intelligence, fairness, and means of information," testified respecting the value of such

tract, divested of all improvements. The average deducible from the testimony of ten of these witnesses is $58,600 per acre, aggregating $2,369,014. The Master also reported in the finding the value, divested of all improvements, of the main yards in Kansas, consisting of 40.659 acres, at $30,000 per acre, aggregating $1,219,770. He should have reported the value of this tract, divested of all improvements, at not less than $53,714 per acre, aggregating $2,183,968, inasmuch as thirteen witnesses, whom the Master states to be of "equal intelligence, fairness, and means of information," testified respecting the value of such tract, divested of all improvements. The average deducible from the testimony of seven of such witnesses is $53,714 per acre, aggregating $2,183,968.

The Master in the finding reported the value of the north yards, consisting of 14.9 acres, at $23,000 per acre, aggregating $342,500. He should have reported the value of the tract known as the north yards, divested of all improvements, at not less than $37,768 per acre, aggregating $562,748, as seventeen witnesses, whom he states to be of "equal intelligence, fairness, and means of information," testified respecting the value of the tract, divested of all improvements. The average deducible from the testimony of eleven of such witnesses is $37,768 per acre, aggregating $562,748.

The Master states that the witnesses, who testified concerning the value of such lands, divested of all improvements, had equal means of information, and in reaching the conclusions in the finding, he gave greater weight to the testimony of the

witnesses produced by the Attorney-General,—when the testimony of E. F. Allen, W. S. Beard, R. E. Cable, E. S. Merrill, C. D. Parker and C. W. Whitehead was wholly incompetent and entitled to no weight whatever, for the reason that each of the witnesses admitted that he did not know the market value of such land or any of it for stock-yards or railroad purposes.

If all of the property of the Stock Yards Company is valued at the amount for which its stock could have been bought and sold before the enactment of the act of March 3d, 1897, then the property belonging to the company, not used by it in the operation of its yards, should be deducted from the real value of the property used for stock-yards purposes only. The court below determined this sum to be "upwards of a million dollars." (R.943.)

The Master, in his report, fixed the amount at $1,200,000 (R. 75-76), but if this amount were deducted from $10,021,-364, the value of the stock in 1896 at $136 per share of $100 per share, the real value of the property of the company used by it in the operation of its yards would be $8,800,364. If the value of the stock is calculated at $132, and $1,200,000 is deducted for outside holdings, the value of the property used for stock-yards purposes would be $8,515,000; but the Master erroneously, and without any warrant therefor from the testimony, includes in his schedule of property not used for stock-yards purposes, a certain tract of land shown on Exhibit Z as a part of the Graham tract, cut by James street, value about $50,000;

when the Master should have found that by reason of the fact that this strip of land is used for the purpose of upholding the superstructure of a stock viaduct leading to the Armour Packing Company's plant in that vicinity, it is a necessary and essential part of the stock yards and a valuable and important connection between the Stock Yards Company and the Armour Packing Company.

The Master also reported that 8.028 acres on the west side of the Kansas river, designated on Exhibit Z as "D," is not used for stock-yards purposes. He should have reported that this tract, of the value of about $45,000, is used daily by the Stock Yards Company as a dumping-ground for the disposal of offal and other refuse matter from the quarantine yards, the testimony showing that it was necessary for the company to have special dumping-grounds to dump refuse from the infected or quarantine stock kept in the yards adjacent to this ground, and that the company, under the Government regulations pertaining thereto, would not be permitted to use a common dumping-ground to dump refuse from the quarantine yards. (R. 166-171.)

The Master reported that 12.122 acres lying west of the property designated as "E," on Exhibit Z, is not and was not used by the company for stock-yards purposes. He should have reported that a large part of the tract is daily used by the company as a dumping-ground, and that the land was absolutely essential to the economical operation of the yards, and that if the land had not been provided, the annual expense

of having the refuse from the main and other yards, lying on the east side of the Kansas river, disposed of, would have been approximately $8,000, and this annual expenditure is saved to the company by having this parcel of land, and using it for such purpose. (R. 229, 166-171.)

The Master reported that the seven small tracts north of the property described in Exhibit Z as "E," are not used for stock-yards purposes. He should have reported that these tracts of land, of the value of about $85,000, were purchased by the defendant company for the purpose of rounding out the north yards, in order to make connections with the packing-house establishments and railroads.

The Master reported that railroad live-stock cars owned by the Stock Yards Company, of the value of $8,000, are not used for stock-yards purposes. He should have reported that such cars were not used at present, but that they were owned by the company and in fit condition to be used at any time upon its tracks in its yards, whenever such use might become necessary by reason of any exigency of the business.

The Master reported in the finding that cash and credits to the amount of about $400,000 are not used by the Stock Yards Company for stock-yards purposes, thereby intending to convey the idea that the result of the Stock Yards Company's operations was the accumulation of surplus cash and credits of about $400,000. He should have reported to this court that the net surplus on hand in cash by the company on the 1st of January, 1897, was $188,000, and that this surplus was the accumula-

tion of the excess of gross earnings over disbursements for a period of years, and that it was necessary for the company to have on hand considerable cash at all times to properly carry on its business. (R. 318.)

The Master in the finding valued all the real and personal property mentioned therein not used for stock-yards purposes at about $1,200,000, when he should have reported that the value of all the property owned by the company not used for stock-yards purposes was $565,425. (R. 849.)

Therefore, upon the testimony, the total valuation of all the real and personal property of the Stock Yards Company not actually used by it in the operation of its yards on December 31st, 1896, was $565,425 only,—in round numbers less than $600,000. (R. 318, 316, 849.)

As the Master included in the $1,200,000 for outside property two tracts of real estate containing respectively 8.028 acres and 12.122 acres, of the value of $126,140, which should be embraced as a part of the plant (R. 872), that sum should be deducted from the $1,200,000.

Again, as the Master deducted only $5,591.53 and $6,007.45, aggregating $11,598.98, for income of outside property, it is evident that the property regarded by him as disconnected from the stock-yards business was not of the real value of $1,200,000.

In estimating the value of the property of the Stock Yards Company, the Master improperly complicated the affairs of the Stock Yards Company, which commenced active business on January 1st, 1884, with that of prior corporations engaged

in yarding cattle at Kansas City. (R. 61.) He refers to the incorporation of the company December 10th, 1883, as a reorganization, and he did not distinguish between the separate corporations, *"but treated them as being one and the same."* (R. 62.)

He further complicated the value of the property in his findings, by reciting the sales of lands to stock-yards corporations existing prior to December 10th, 1883. (R. 62-63.) And also by tabulating the capital stock and other matters connected with corporations carrying on stock-yards business prior to that time. (R. 79.)

As the Kansas City Stock Yards Company was not incorporated until December 10th, 1883, and did not commence active operations until January 1st, 1884, the cost of property to prior corporations, the capital stock of such corporations, and the dividends declared by them, we deem wholly unimportant to the present controversy. Therefore, in this case, it is unnecessary to investigate prior corporations or their business affairs. The act of March 3d, 1897, attempts to regulate the rates and prices of the defendant Stock Yards Company,—not a prior company. The original purchase made by the defendant company from another stock-yards company on January 1st, 1884, was, as before stated, for $1,990,000, which was paid in stock to the stockholders of the other company, and the stock at that time was above par. The defendant company then purchased the property of the old company, as stated in the testimony (R. 216), and since the organization of the present Stock Yards

Company, all stock issued has been paid for in cash, or represented moneys expended from time to time for lands and improvements, or has been issued for the increased value of the lands of the company since the date of the purchase thereof. (R. 284.)

In any view in which the testimony may be considered, we think THAYER, J., erroneously concluded that the value of the property used for stock-yards purposes, as assessed by the Master, "is not unreasonable, considering the object for which such valuation was made." (R. 944.)

This conclusion is against all of the testimony. The facts do not justify any consideration of the original cost of the lands to prior corporations, or even to the defendant company, and very much of the statements and figures of the Master in his report, found on pages 79-80 of the printed record, has little application to the controversy before the court.

In the case of *Ames v. Union Pacific,* 64 Fed. 165, the amount of stock and bonds "was far in excess of the present value of the property."

Mr. Justice BREWER in that case remarked:

"No inquiry is open as to whether the owner has received gifts from the State or individuals, or whether he has managed the property well or ill, or so as to acquire a large fortune therefrom. It is enough that he owns the property, has the legal title, and, so owning, he must be paid the actual value of that property. If he has done any wrong in acquiring or using the property, that wrong must be redressed in a proper action therefor, and cannot be made a factor in condemnation proceedings. These propositions in respect to condemnation pro-

ceedings are so well settled that no one ever questions them. The same general ideas must control legislation of the kind before us. The value of the property cannot be destroyed by legislation depriving the owner of adequate compensation. The power which the Legislature has is only to prescribe reasonable rates, not any rates. That which is unjust cannot be reasonable, and when the strong arm of the Legislature is laid upon property, it must be so laid as to do justice to the investors."

This language applies with great force in the present case. We earnestly insist that the Stock Yards Company is entitled to the benefit of any appreciation in value, above the original cost and the cost of its improvements, in determining the real value of its property.

FIFTH POINT.

NET INCOME OF THE STOCK YARDS COMPANY.

In 1896 the Gross Earnings were $1,023,870.20. Total Disbursements Paid out of Earnings were $537,643.70, leaving Net Income from the Earnings for that year of $486,226.50.

Having ascertained from the testimony the real value of the property used for stock-yards purposes, it is important to inquire as to the amount of the net income of the Stock Yards Company under the rates existing prior to March 3d, 1897. The Master and the court below determined the gross income of the company and the net income from the results of the operation of the company for the year 1896. (R. 940-947, 69-71.)

From the gross earnings the Master deducted $11,598.98 as rent from outside property, and also $2,346.56 from the disbursements as taxes on outside property, and therefore he reported the net income less all of the disbursements, from the earnings of 1896, at $476,974.08. (R. 70-71.)

THAYER, J., in referring to income and expenditures for 1896, says:

"The gross income realized by the Stock Yards Company during the year 1896, which may be taken as representing its average gross income, was $1,012,271.22. The total expenditures of the company for all purposes during the same period amounted to $535,297.14, which would indicate a net income for the year of $476,984.08." (R. 944.)

The Master also reported that if the statutory rates had been

applied to the business of the company for 1896, and the disbursements for that year, which were paid from the earnings, were properly chargeable to the earnings, then the net income would have been $176,322.31 only. (R. 73.)

There ought not to be, in view of the stipulations of the parties to this suit, any difficulty in determining absolutely the net income of the company for 1896. In order not to burden the record with unnecessary testimony, the parties expressly agreed in writing as follows: "For the purpose of removing any question which may exist in regard to the manner in which the earnings of the Stock Yards Company were disbursed during the year . . . 1896 for operation, maintenance and extensions of improvements, it is agreed as follows:

"1896:

The gross earnings were $1,023,870.20.

From this amount there was expended, in addition to the $368,059.05 shown by the "profit-and-loss account" for that year, the following amount.. $176,394.60

This amount was disbursed for the following purposes:

For completion of the new Missouri addition to the Exchange building, begun in 1895.....$24,854.35

(This includes $386.08 for a new vault in the Kansas part of the building.)

For completing power plant, begun in 1895 ..... $5,950.56

On horse stable..... $220.77

(Expense of constructing wash-room to take the place of former one, including material and labor.)

On horse stable, H. & M. dep't..... $33.92

Amount forward..... $176,394.60

(Labor and painting.)

On mule stable, H. & M. dep't..... $831.12

(Constructing office rooms in the building.)

On horse and mule stable..... $1,541.18

(Taking out old front of Sparks's barn and rebuilding it about 25 feet further front on street line, making the building larger.)

For transit house..... $56.13

(Making additional windows.)

On hay and grain barns..... $4,276.95

(For moving one barn, enlarging it, and fitting it up, $600, and the rest for the erection of three new barns where there had been none before.)

On scale-houses and scales..... $6,228.77

(For completing two scale-houses and scales in Missouri extension and building two scales and scale-houses in the hog division on the north side and one in the sheep division on the north side—all new and original construction except the one in the sheep division on the north side, which took the place of a house which had become unfit for use.)

Sundry small buildings..... $1,163.91

(Of this amount about $700 was expended in rebuilding a worn-out train office which originally cost about $300, and which was inadequate for the business. The balance is for putting up new buildings, including a train office in the north yards, where there had been none before.)

Chutes and fences..... $24,892.56

(Fences in new yards in new Missouri extension.)

Drainage..... $2,416.09

Amount forward $176,394.60

(Construction of and laying new drainage-pipes in the north yards, taking the place of former drainage system there, the new ones being required in consequence of the different arrangements of the new water supply.)

Office furniture, new..... $1,052.44

Brick paving..... $75,169.87

(Of this amount $44,492.07 was expended for paving to take the place of paving in alleys, plank flooring worn out, and the rest, $30,677.80, was expended for paving the pens in the new Missouri extension.)

Railroad tracks, lifting-jack..... $7.42

Hog-sheds $4,420.65

(Portion of a large amount expended for rebuilding hog-sheds, which portion was estimated as a betterment over original cost of the former sheds, the new sheds covering an additional area equal to the capacity of eleven cars of stock.)

Sheep-sheds $12,541.71

(New sheep-sheds built in the north yards on the site of former cattle-pens.)

Viaducts $6,809.80

(Expended for an extension in the main yards of viaducts built in 1894.)

Water supply..... $3,926.40

(For pipes, hydrants, etc., to carry water to pens and new hog- and sheep-sheds in the north yards, necessitated in place of former water-pipes, etc., by rearrangement of the sheds.)

——— $176,394.60

This account is credited this year with the following items:

Amount forward		$176,394.60
Estimated value of material credited to "flooring cattle-pens—alleys," being old material taken therefrom	$6,489.43	
Horses belonging to company sold	294.00	
Wagons and carts sold	26.52	
		$6,809.95
Balance		$169,584.65

L. C. Boyle, *for Defendant.*
Albert H. Horton,
D. R. Hite, *for Complainants.*
Pratt, Dana & Black,
For Other Defendants, including K. C'y Stk. Yds. Co."
(R.89-91.)

Therefore, according to the written stipulation of the parties, the gross income in 1896 was $1,023,870.20, and the total disbursements for that year were $537,643.70. Thus it will be seen that the net income of the Stock Yards Company for the year 1896 amounted to $486,226.50 only. The company that year paid a six-per-cent. dividend, amounting to $429,160.50, leaving a surplus of ~~$44,105.50~~ $57,066.00. We contend that there should be no controversy on account of the written stipulations over the nature of the expenditures for 1896. The Attorney-General agreed that in addition to the $368,059.05, expended as shown by the profit-and-loss account for that year, the further sum of $176,394.60 was also expended "for operation, maintenance and extension of improvements." It is obvious that these expenditures in 1896 were necessary for the proper carrying on of the business of the company.

Mr. Justice BRADLEY said, in *Union Pacific v. United States*, 99 U. S. 402, that—

"'Net earnings' within the meaning of the law, are ascertained by deducting from gross earnings all ordinary expenses of organization and of operating the road, and expenditures *bona fide* made in improvements, and paid out of earnings, and not by the issue of bonds or stock."

To make the stipulation of the parties concerning the income and expenditures for 1896 more emphatic as operating expenses and *bona fide* expenditures made for improvements, paid from earnings, the further stipulation was made between the parties concerning the expenditures for five months of the year 1897. That stipulation, which should be considered in connection with the other written stipulation about income and expenses, is as follows:

"There was actually expended by the Kansas City Stock Yards Company during the first five months of the year 1897 for the following purposes the sum of		$217,324.08
For operating expenses, including labor, cleaning yards, office expenses, insurance, taxes, lost and damaged stock, and similar items		$151,102.24
For cost of maintenance, including the following items:		
Two toilet-rooms in Exchange bldg	$1,270.40	
One dynamo for power plant	552.80	
Changes in horse stable (Gould's)	42.53	
One office for commission merchant in large horse barn	250.27	
Construction of two mule barns No. 3	19,723.51	
Painting one hay barn	41.03	
Addition to horse shed to increase its capacity	248.72	

Amount forward		$151,102.24
Subdividing and changing pens in quarantine yards	$1,025.33	
Drainage for mule barns No. 3, above referred to	462.62	
Office furniture	6.50	
Horses purchased for company's use	171.00	
Paving around mule barns No. 3, above referred to	1,698.66	
Same	453.65	
Labor on switch (railroad tracks)	25.00	
Viaduct, quarantine yards	3,012.54	
Two approaches to viaducts in main yards	1,053.19	
Wagons and carts bought for company's use	165.00	
Water supply for mule barns No. 3	149.32	
Riprapping river-bank, main yards, to protect it from encroachments by river	869.77	
Also $35,000, being the amount paid to said company for land deeded to the Schwarzchild & Sulzberger Company in consideration of the immediate expenditure by said packing establishment of the sum of at least $100,000 in the enlargement of its plant sufficiently to consume about two thousand head of cattle more per week than it had theretofore consumed	35,000.00	
		66,221.84
Aggregate		$217,324.08

L. C. Boyle, *Defendant.*

D. R. Hite,

Solicitor for Complainants."

(R. 81-82.)

Therefore, we assert that the Attorney-General is now estopped by the stipulations referred to from any controversy over the expenditures in 1896 of $169,584.65. After these stipulations were agreed to and filed in the court below, it was unnecessary for the appellants to prove the yearly depreciation on the wooden structures and other improvements in the stock yards. We assumed then and insist now, that when the Attorney-General agreed that the expenditures made by the company of $66,221.84 during the first five months of 1897, as itemized in the stipulation filed August 24th, 1897, (R. 81-82,) were "cost of maintenance," and when he further agreed that the expenditure of $169,584.65 for 1896 as itemized therein was "for operation, maintenance and extensions of improvements," that it is too late to say that said expenditures, having been paid out of earnings and not by the issue of stocks or bonds, should not be charged to ordinary operating expenses. They should be treated under the stipulations as properly chargeable against earnings. We call attention to the fact that no bonds were issued for any of the disbursements for 1896, and the intimation by THAYER, J., in his opinion, that "In due season, the company would doubtless have capitalized the amount of said expenses by issuing stock therefor," is not supported by any testimony, and is contrary to all of the testimony. (R. 316, 317.)

"Everything of the kind [improvements and renewals] in the way of expenditures is put directly into the expense account." (Testimony of Mr. Morse, R. 238-239.)

In 1896 not only was the sum of $169,584.65 actually paid out of earnings, but no stock whatever was issued therefor; so that whatever might be said concerning previous expenditures of the same kind, and the impropriety of charging them against earnings, the case presented by the business of the company for 1896 is within the authorities on this subject. The company derived the money which it expended for maintenance and improvements from earnings, and from no other source, and these expenditures were made under the supervision of "a careful, wise, economical management" for the express purpose of keeping the property in a serviceable condition. And as said by Mr. Justice BRADLEY in *United States v. U. P. R. Co., supra, "We think that the true interest of the Government in this case is the same as that of the stockholders, and will be subserved by encouraging a liberal application of the earnings to the improvement of the works."*

In the *Reagan* case, 154 U. S. 362, it was contended that the expenditure of some $300,000 by the railroad company for "cost of road, equipment and permanent improvements" should not be charged against earnings as operating expenses, because there was included in this amount about $113,000 expended for new rails, stations, fences, furniture, masonry, grading, fixtures, bridges, and trestles; and it was doubtless urged upon the court in that case that those expenditures ought not to be considered, for the reason that they added materially to the value of the railroad. Mr. Justice BREWER indicates very plainly in the opinion that this was

wholly immaterial, and, as he said: "It goes without saying that in the operation of every road there is a constant wearing-out of the rails and a constant necessity for replacing old with new. And further, it being shown affirmatively that there were no extensions during that year, it is obvious that these expenditures were those necessary for the proper carrying on of the business required of the company."

The testimony of the General Manager of the Kansas City Stock Yards Company affirmatively shows that there were no extensions of the grounds in 1896, and that none are in contemplation. (R. 238.)

It was decided in *Southern Pac. Co. v. Board of Railroad Commissioners,* 78 Fed. 236, that—

"In ascertaining the cost of operating a railroad, with reference to determining the reasonableness of rates, the expenses of operation are not to be strictly limited to the cost of running trains, excluding all betterments, but the cost of reasonable renewals and improvements of road-bed, and equipment should be included in the operating expenses."

The Stock Yards Company, like all other corporations engaged in a similar kind of business, of necessity keeps a great many accounts, wherein the particular items which go to make up gross disbursements are recorded. It cannot be assumed that the ultimate fact, which it is apparent this court must ascertain, is to be seriously affected by the mere manner in which the books of the defendant company are kept. (*Reagan v. Farmers L. & T. Co., supra.*) What is in reality the amount of net income received by such a corporation, is the question,

and the act of the Legislature should neither be upheld, nor annulled by a mere matter of bookkeeping. The report of the Master indicates very clearly that the Stock Yards Company was in the practice of crediting its profit-and-loss account with the items which made up its gross income, and charging the same account with its running expenses only. The balance of this profit-and-loss account was not seriously taken by the Master, nor by the Attorney-General, as fairly indicating the net income. It became apparent to the Master, as well as to the parties, that large expenditures had been made by the Stock Yards Company out of its earnings which were not charged in the "profit-and-loss" account, and the question was immediately presented whether these expenditures should be added to the "running expenses" in that account in order to correctly determine the net income. In consequence of the opposite views entertained by the complainants and the Attorney-General respecting the propriety of these expenditures and the consideration of them as part of the "operating" expense, the stipulations referred to were formally made, which were intended by the parties, as shown by the language employed, to remove any question which might exist as to the amount of the gross income of the Stock Yards Company and its expenditures.

In view of the fact that the Master and the court below selected the business of the year 1896 for the purpose of comparison, it is unnecessary to discuss the correct method of ascertaining the net income for any other year.

But even if the stipulations of the parties concerning the dis-

bursements of the company for 1896 are wholly ignored, yet when the items which go to make up the disbursement of $169,584.65 are examined in the light of the authorities, it seems perfectly clear that the Stock Yards Company has not done anything unusual, and that the net income of that company for 1896 must be considered as that sum which remains after deducting from the gross earnings not only the mere running expenses of the plant, but also the charges detailed in the stipulation.

We refer to the language used by Mr. Justice BRADLEY in the *Union Pacific Case,* found on page 409, as follows:

"We are disposed to agree, therefore, with the judge who delivered the concurring opinion in the court below, that the 27th item of expenditure, as stated in the table of expenses in the 18th finding, entitled 'expenditure for station buildings, shops, etc.,' is a charge that may properly be made against earnings, since, as the fact is, such expenditures were actually paid therefrom, and were not carried to capital account."

It is clear that if the statutory rates had been in force at the stock yards in 1896, the result would have been a certain, positive, definite sum, because the gross income from the application of such rates is ascertainable to a mathematical certainty, and the amount of disbursements, except dividends, which were in fact made out of earnings, is ascertainable not upon any theory, but from the actual facts. It is unfair to assume a condition of affairs which did not exist during that year with reference to expenditures. An exact, definite sum was actually received by the defendant company during the

year 1896, and notwithstanding the sum disbursed during the same period is just as precise, definite and exact as to the amount of income, an attempt was made by the court below to exclude a large portion of such disbursements. It would be just as fair to exclude considerable sums from the income as mere adventitious receipts, as to exclude anything from the disbursements as mere adventitious expenditures. Moreover, we submit that no mere theory of the Master or court below should prevail against the actual facts, or against the clear, explicit and uncontradicted testimony of the competent, wise and economical managing officers of the company, whose opinions as to the necessity for such expenditures were unreservedly acquiesced in by the stockholders of the company, and against the conclusive fact that these opinions were crystallized into actual expenditures for purposes which, these officers testified, were essentially necessary to keep the plant in a serviceable condition.

The parties themselves have seen fit to employ certain language in their written agreements, and that language cannot be ignored in deciding this case.

The contention of the Attorney-General, as expressed by the Master's report, is not new. It has usually been presented in various forms by other State officers in cases where States have attempted to regulate the charges of corporations which it was alleged were engaged in business charged with a public use.

Mr. Justice McKenna had occasion to examine this question in the *Southern Pacific Railroad Co. v. Bd. of Railroad Com-*

missioners of California and others, reported in 78 Fed. Rep. 236. On page 238 of the reported case, in the 17th paragraph of the syllabus, Mr. Justice McKenna states the law upon this subject in the following language:

"*Held, further,* That in ascertaining the cost of operating a railroad, with reference to determining the reasonableness of rates, the expenses of operation are not to be strictly limited to the cost of running trains, excluding all betterments, but the cost of reasonable renewals and improvements of road-bed, track and equipment should be included in the operating expenses."

And on page 264, in the course of the opinion, the court proceeds as follows:

"The second ground of objection, that is, that to improvements and betterments, there will have to be considered—first, the abstract legality of such a charge; and, second, the competency of it under the leases. The abstract legality of such charge is established by the Reagan case. The same contention was made there, and a deduction of the sum of $302,085.77 was claimed to have been charged to operating expenses, whereas it was expended for 'cost of road, equipment and permanent improvements.'"

Mr. Justice Brewer, commenting on the claim in the Reagan case, said:

"Again, the sum of $302,085.77 appears in that table, under the description, 'cost of road, equipment, and permanent improvements, admitted to have been included in operating expenses,' and is added to the income as though it had been improperly included in operating expenses. But, before this change can be held to be proper, it is well to see what further light is thrown on the matter by other portions of the report.

That states that there were no extensions of the road during that year, so that all of this sum was expended upon the road as it was. Among the items going to make up this sum of $302,085.77 is one of $119,212.09 for rails, and it appears from the same report that there was not a dollar expended for rails except as included within this amount. Now, it goes without saying that, in the operation of every road, there is a constant wearing-out of the rails, and a constant necessity for replacing old with new. The purchase of these rails may be called 'permanent improvements,' or by any other name; but they are what is necessary for keeping the road in serviceable condition. Indeed, in another part of the report, under the head of 'renewals of rails and ties,' is stated the number of tons of 'new rails laid on the main line.' Other items therein are for fencing, grading, bridging, and culvert masonry, bridges and trestles, buildings, furniture, fixtures, etc." (*Reagan v. Farmers Loan and Trust Co.*, 154 U. S. 362.)

The opinion of Mr. Justice BRADLEY, on page 409 of *Union Pacific v. United States*, 9 Otto, 402, is as follows:

"Theoretically, the expenses chargeable to earnings include the general expenses of keeping up the organization of the company, and all expenses incurred in operating the works and keeping them in good condition and repair; whilst expenses chargeable to capital include those which are incurred in the original construction of the works, and in the subsequent enlargement and improvement thereof. With regard to the last-mentioned class of expenditures, however, namely, those which are incurred in enlarging and improving the works, a difference of practice prevails among railroad companies. Some charge to construction account every item of expense, and every part and portion of every item which goes to make the road, or any of its appurtenances or equipments, better than they were before; whilst others charge to ordinary expense account, and against earnings, whatever is taken for these purposes from the

earnings, and is not raised upon bonds or issue of stock. The latter method is deemed the most conservative and beneficial for the company, and operates as a restraint against injudicious dividends and the accumulation of a heavy indebtedness. The temptation is to make expenses appear as small as possible, so as to have a large apparent surplus to divide. But it is not regarded as the wisest and most prudent method. The question is one of policy, which is usually left to the discretion of the directors. There is but little danger that any board will cause a very large or undue portion of their earnings to be absorbed in permanent improvements. The practice will only extend to those which may be required from time to time by the gradual increase of the company's traffic, the dispatch of business, the public accommodation, and the general permanency and completeness of the works. When any important improvement is needed, such as an additional track, or any other matter which involves a large outlay of money, the owners of the road will hardly forego the entire suspension of dividends in order to raise the requisite funds for those purposes; but will rather take the ordinary course of issuing bonds or additional stock. But for making all ordinary improvements, as well as repairs, it is better for the stockholders, and all those who are interested in the prosperity of the enterprise, that a portion of the earnings should be employed."

In the case of *Dent v. London Tramways Company*, decided in 1879, recorded in 16 Chancery Division, 344, the law upon this subject is clearly presented. The court say:

"Then I have to consider the question: What are net profits? A tramway company lay down a new tramway. Of course the ordinary wear and tear of the rails and sleepers, and so on, causes a sum of money to be required from year to year in repairs. It may or may not be desirable to do the repairs all at once; but if at the end of the first year the line of tramway

is still in so good a state of repair that it requires nothing to be laid out on it for repairs, a sum of money ought to be set aside as representing the amount in which the wear and tear of the line has, I may say, so far depreciated it in value as that that sum will be required for the next year or next two years.

"Take the case of a warehouse. Supposing a warehouse-keeper, having a new warehouse, should find at the end of the year that he had no occasion to expend money in repairs, but thought that, by reason of the usual wear and tear of the warehouse, it was a thousand pounds worse than it was at the beginning of the year, he would set aside a thousand pounds for a repair or renewal or depreciation fund before he estimated any profits; because, although that sum is not required to be paid in that year, still it is the sum of money which is lost, so to say, out of capital, and which must be replaced. I should think no commercial man would doubt that this is the right course—that he must not calculate net profits until he has provided for all the ordinary repairs and wear and tear occasioned by his business."

The court then commented on the accounts for the half-year ending December 31, 1878, observing that the existing reserved fund was altogether inadequate for the purpose of ordinary maintenance, and that the contingency fund was not applicable to such purpose. He then continued:

"That being so, on the present evidence I am satisfied that there are no profits at present available for division."

In the case of *United States v. Kansas Pacific,* 99 U. S. 455, in reference to the expenditures to be charged against gross earnings before reaching net income, the court say:

"The former [referring to the government] insist that cer-

tain items should be excluded from the account which are claimed by the latter [meaning the railroad] to be legitimate. These items are designated in Schedule C, annexed to the findings of the court below, and are as follows:

"*First.* 'Depreciation account, or expense not charged up.' This is explained to be the amount necessary to put the road in proper repair, but which was not actually expended for that purpose. We are clearly of the opinion that it is not a proper charge. Only such expenditures as are actually made can with any propriety be claimed as a deduction from earnings.

"*Second.* 'Construction account, or improvements and additions to track,' etc. This item, according to what we have said in the Union Pacific Railroad case, ought to be allowed.

"*Third.* 'Equipment account, or replacing and rebuilding rolling-stock, machinery,' etc. This item should also be allowed as an expenditure properly chargeable to the earnings of the road, when actually paid out of the earnings and not raised by the issue of bonds or stock.

"*Fourth.* 'Real estate purchased for depot grounds, etc., and expenses of same.' This item is a proper charge if actually paid out of the earnings, and not raised by bonds or stock."

Within the language of Mr. Justice Brewer, in the opinion in the Reagan case, Thayer, J., was manifestly in error in his conclusion concerning the $169,584.65 disbursed in 1896, as shown by the stipulation of the parties. (R. 89-91.) He remarked that "a very large part of the sum last mentioned [$169,584.65]—all of it, in fact, except $6,000, was expended in building new structures and making permanent improvements." (R. 945.)

An examination of the disbursements of 1896 "for operation, maintenance and extension of improvements," shows that

the following amounts were expended that year for repairs and renewals:

For vault in the building	$386.08
For washroom in horse stable, to take the place of the old one	220.77
Labor and painting on horse stable	33.92
Office-rooms in building	831.12
Taking out old front of barn, and rebuilding it	1,541.18
Additional windows in transit-house	56.13
For moving old barn and fitting it up	600.00
One scale-house and scales in the sheep division	1,557.19
For rebuilding a worn-out train office	700.00
New drainage pipes, taking the place of former drainage system	2,416.09
For paving, to take the place of worn-out paving	44,492.07
Total	$52,834.55

In the place of only $6,000 being expended in repairs and renewals, there was actually expended in 1896, $52,834.55.

We insist, as before stated, that under the stipulation of the parties and the decisions referred to, the total sum of $169,584.65 is chargeable to actual expenses for 1896. But limiting the expenses of 1896 to repairs and renewals only, and excluding therefrom the expenses "of extension of improvements," the sum of $169,584.65 can be reduced only by the sum of $116,750.10, leaving as expended for repairs and renewals in 1896, $52,834.55.

SIXTH POINT.

IF IT WOULD BE UNREASONABLE TO REDUCE THE TOTAL NET INCOME OF THE STOCK YARDS COMPANY SEVENTY-FIVE PER CENT., PRIMA FACIE IT IS UNREASONABLE TO REDUCE ANY PART OF SUCH NET INCOME SEVENTY-FIVE PER CENT.

Ames v. U. P. Ry., 64 Fed. Rep. 165-189.

In finding No. 35 (R. 72-73) the Special Master presents his conclusion as to the effect of the provisions of the act in controversy, if these provisions had been in force during the year 1896 at the stock yards. The evident purpose of this finding is to give to the court an estimate of what would be the net income of the Stock Yards Company by the necessary operations of the act. It will hereafter very clearly appear that finding No. 35 is utterly ineffectual for that purpose, and conveys no intelligent idea of the actual result. It was the duty of the Master to have saved the court the necessity of making labored computations. His report should have indicated the net income of the Stock Yards Company in 1896, under the rates and charges fixed by the company, from each item affected by the provisions of the act. He should have then compared these results with the net income which would have been derived from the sources attempted to be regulated by the statute, if the rates fixed by the statute had been in force during the year 1896. In this way the extent of the diminution and the

amount of the return under such circumstances would have clearly appeared. Instead of doing this, the Master gives the court the gross income from yardage of cattle, calves, hogs and sheep in 1896 under the company's rates, and then compares the gross income from yardage under the rates provided by the statute. When he reaches the question of feed, he reports to the court the gross receipts from feed sold to cattle, calves, hogs, and sheep, notwithstanding he had reported in finding No. 35 the whole income of the company from the sale of feed not only to cattle, calves, hogs, and sheep, but to all other live stock, and then attempts to compare the income from feed served to cattle, calves, hogs and sheep with the total income received from feed served to all live stock; and he reports that the diminution of net income would have been $300,651.77. (R. 72-73.)

There are certain matters which embarrass this case and render the computations more than ordinarily difficult. There is in the act no interference with the income of the Stock Yards Company from the horse and mule department, or from rentals, interest, etc., nor is there any interference, so far as this question is concerned at least, with the income of the company derived from loading and unloading stock, so that we cannot place all of the expenses against all of the receipts and draw our conclusions therefrom. The attempt on the part of the Legislature is to prescribe maximum charges for driving, watering, yarding and weighing cattle, calves, hogs, and sheep, and to prescribe maximum prices for the sale of feed, and in

this suit the court is called upon to determine whether rates and charges fixed by the statute are unreasonable and afford no fair compensation to those who own the stock yards. In order to ascertain this, we must first find what it costs to drive, yard, water and weigh cattle, calves, hogs, and sheep, and what it costs to serve feed, what the receipts have been from these sources, and what reduction will be made in such receipts by the application of the act; and then we must take such proportion of the whole value of the stock yards as the present earnings from feed and yardage bear to the total earnings of the company. From these computations we may see whether the reduction made by the act in feed and yardage, if applied to all of the company's business, would leave any compensation to the owners, and if so, how much. The tables which follow give the results necessary to determine the amounts to be used in order to ascertain whether the reduction made by the act, if applied to all of the company's business, would leave any compensation to the owners of the property, and if so, the per cent.

These tables have been compiled from facts ascertainable from a careful scrutiny of findings Nos. 33, 33½, 34, 35, and 38. (R. 69-74.) The percentages and proportions have been carefully calculated, and it is believed they are correct.

The Stock Yards Company, as shown by the stipulation of the parties to these suits, received in 1896 a gross income of $1,023,870.20, and disbursed during the same time, for operation, maintenance, and improvements, as shown by the same

stipulation, the sum of $537,643.70. The rate per cent. of such disbursements to gross income is 52.51.

The gross income stated in said stipulations was derived from the following sources:

Yardage of cattle, calves, hogs, and sheep	$665,658.05
From feed sold (after deducting its cost)	187,994.69
Commissions received in horse and mule department	19,116.20
From railroads for loading and unloading cars	76,803.00
Rentals received from buildings of the company	68,706.73
From dividends, interest, and premiums on stock	5,591.53
Total gross income	$1,023,870.20

(R. 89.)

The expenditures, as stated in said stipulation of the parties, were made for the following purposes:

Paid out for labor, salaries, wages, ordinary repairs, etc.	$257,867.38
For advertising, traveling expenses, telephone service, stationery, fuel, postage, worthless accounts, etc.	66,191.65
Taxes	22,671.25
Rents paid by the company for leased ground	7,200.00
Premiums on policies of insurance	12,836.00
Paid for live stock injured or lost	1,292.77
Paid out of earnings for maintenance, improvements, etc., as per exact details in said stipulation	169,584.65
Total disbursements, as per stipulation	$537,643.70

(R. 81,89-91.)

The gross and net income of the Stock Yards Company for the year 1896, stated in detail, (the cost of operation and maintenance being calculated upon the rate per cent., heretofore stated, of disbursements as per the stipulations of the parties,

at 52.51 per cent. of the gross income,) is shown by the following tables.

The gross income, cost of operation and maintenance, and net income from the sale of feed at the yards, in 1896, are shown in—

FEED. TABLE No. 1.

	Gross Income.	*Rate % of operation and cost of maintenance, as per stipulation, 52.51%.*	*Net Income.*
Amount received for feed (less cost) served to cattle, hogs, calves and sheep	$150,432.54	$78,992.13	$71,440.41
Amount received for feed in horse and mule department (less cost),	27,385.59	14,380.17	13,005.42
Amount received for feed in Gould barn (less cost)	10,176.56	5,343.71	4,832.85
Totals	$187,994.69	$98,716.01	$89,278.68

(R. 74.)

The result upon the business of the Stock Yards Company in 1896, in its transactions in feed, if the rates provided for by the act approved March 3, 1897, had prevailed in that year, is as follows:

FEED. TABLE No. 2.

	Gross Income.	*Cost of operation and maintenance the same as in Table No. 1.*	*Net Income.*
Amount received for feed served to cattle, calves, hogs and sheep (less cost of feed)	$74,258.34	$78,992.13	—$4,733.79 Deficit.
Amount received for feed in horse and mule department (less cost of feed)	27,385.59	14,380.17	13,005.42
Amount received for feed in Gould barn (less cost of feed)	6,104.27	5,343.71	760.56
Totals	$107,748.20	$98,716.01	$9,032.19

The following table shows the gross and net income for yardage during 1896:

YARDAGE. TABLE No. 3.

	Gross Income.	*Rate per cent. of cost of operation and maintenance, as per stipulation, 52.51%.*	*Net Income.*
Cattle.....1,619,368, at 25c..	$404,840.75	$212,581.89	$192,258.86
Calves ..... 95,634, at 10c..	9,563.40	5,021.74	4,541.66
Hogs.....2,594,465, at 8c..	207,557.20	108,988.29	98,568.91
Sheep..... 873,934, at 5c..	43,696.70	22,945.13	20,751.57
Totals.....5,183.401.....	$665,658.05	$349,537.05	$316,121.00

The following table shows what would have been the net income of the Stock Yards Company from yardage, in 1896, if the rates fixed by the terms of the act approved March 3, 1897, had been in force during that time:

YARDAGE. TABLE No. 4.

	Gross Income.	*Operation and maintenance same as in Table No. 1.*	*Net Income.*
Cattle.....1,619,368, at 15c..	$242,904.45	$212,581.89	$30,322.56
Calves ..... 95,634, at 8c..	7,650.72	5,021.74	2,628.98
Hogs.....2,594,465, at 6c..	155,667.90	108.988.29	46,679.61
Sheep..... 873,934, at 4c..	34,957.36	22,945.13	12,012.23
Totals.....5,183,401.....	$441,180.43	$349,537.05	$91,643.38

The reduction in gross and net income from yardage alone by the statute is $224,477.62.

The rate per cent. of total reduction to previous total income is 33.72 of the gross income and 71.01 per cent. of the net income.

The rate per cent. of reduction of net income on cattle is 84.22.

The rate per cent. of reduction of net income on calves is

The rate per cent. of reduction on net income from hogs is 52.63.

The rate per cent. of reduction on net income from sheep is 42.11.

The following table summarizes the results shown in tables 1, 2, 3, and 4, and presents the actual results to the income of the company from feed and yardage of the application of the act approved March 3, 1897, to the business of 1896:

TABLE No. 5.

	Net income in 1896, Tables Nos. 1 and 3.	*Net income under act, Tables Nos. 1 and 4.*	*Amount of reduction, Tables Nos. 2 and 4.*	*Rate per ct. of reduction, Tables Nos. 2 and 4.*
YARDAGE.				
Cattle	$192,258.86	$30,322.56	$161,936.30	84.22
Calves	4,541.66	2,628.98	1,912.68	42.12
Hogs	98,568.91	46,679.61	51,889.30	52.63
Sheep	20,751.57	12,012.23	8,739.34	42.11
Totals	$316,121.00	$91,643.38	$224,477.62	71.01
FEED.				
Served to calves, cattle, hogs and sheep	$71,440.41	—$4,733.79 Deficit.	$76,174.20	106.6
Served in H. and H. department	13,005.42	13,005.42	No change.	None.
Served in Gould barn	4,832.85	760.56	4,072.29	84.27
Totals	$89,278.68	$9,032.19	$80,246.49	89.88
Grand totals	$405,399.68	$100,675.57	$304,724.11	75.16

The amount of gross income received by the Stock Yards Company in 1896 from sources unaffected by the statute of March 3, 1897, mentioned in the bills herein, was $170,217.46. Deducting from this sum its proportion of operating expense and cost of maintenance, 52.51 per cent., the result is the amount of net income received by the company from sources unaffected by the act, to wit, $80,826.82. If this be reduced

by the average reduction produced by the act on the items it affects, it would be $20,077.38; and the total net income would have been $120,752.95.

If the net income of the Stock Yards Company for 1896 under the statutory rates of March 3d, 1897, would have been $176,322.31, (carrying into the account the rents, earnings of horse and mule department, feed and the other items not regulated or reduced by the statute of 1897,) then, under the stipulations referred to, such income would give the following rates per cent. on the values of the property as stated, viz.:

TABLE No. 6.

	Value of Property.	*Annual Net Income.*	*Rate per cent.*
1. The property of the Stock Yards Company estimated at the market value of its stock, being $136 per share	$10,020,480.00	$176,322.31	1.75
2. Same estimate as in No. 1, with $1,200,000 deducted for outside holdings	8,820,480.00	176,322.31	1.99
3. The property of the Stock Yards Company estimated at $132 per share	9,725,760.00	176,322.31	1.81
4. Same estimate as in No. 3, with $1,200,000 deducted for outside holdings	8,525,760.00	176,322.31	2.07
5. The property of the Stock Yards Company estimated at $115 per share	8,473,200.00	176,322.31	2.08
6. Same estimate as in No. 5, with $1,200,000 deducted for outside holdings	7,273,200.00	176,322.31	2.42
7. Real and personal property used exclusively for stock-yards purposes, estimated by the Master in separate parts	5,388,003.25	176,322.31	3.27
8. Valuation in parts according to complainants' witnesses, with the improvements valued separately at $1,480,000	6,053,000.00	176,322.31	2.91
9. Value according to the average of all the testimony, on property in separate parts, and adding thereto the improvements valued at $1,480,000	6,364,000.00	176,322.31	2.77

The following table gives the annual net income and rate per cent. on the value of the property, if the reductions made by the act of March 3d, 1897, be applied to all of the company's business, estimating the value of the property according to different theories:

TABLE No. 7.

	Value of Property.	*Annual Net Income.*	*Rate per cent.*
1. Real and personal property used exclusively for stock-yards purposes. Estimate of the Master	$5,388,000	$120,752.35	2.24
2. Outstanding capital stock at par	7,368,000	Same.	1.64
3. Real and personal property of every description, and all intangible property, good-will, franchises, etc., calculating market value of stock at $115, and deducting $500,000 for outside property	7,973,200	Same.	1.51
4. Real and personal property and good-will, estimated at $780,000	6,168,000	Same.	1.94
5. Same estimated as in No. 3, except that market value of stock is calculated at $132, and $500,000 is deducted for outside holdings	9,215,000	Same.	1.31
6. Same as in No. 1, except estimating market value of stock at $125	8,710,000	Same.	1.39
7. Adding to the estimate in No. 1 the value of cash (surplus), $188,600	5,576,000	Same.	2.16
8. Value according to the complainants' witnesses, improvements valued at $1,480,000	7,253,000	Same.	1.66
9. Value according to the average of all of the testimony on values of all of the witnesses, and adding thereto the improvements valued at $1,480,000	6,364,000	Same.	1.89

If the earnings under the new act, as stated in this table and as previously found, be capitalized at six per cent., and the value of the property thus estimated, it will be found that all of the property of the company as operated under the provisions of the alleged statute would only produce six per centum, net,

per annum, on $2,012,566, which would, according to accepted business rulings, be the value of such property.

What are we to conclude from the facts disclosed by these tables? The following clearly appears: If the statutory rates had been in force at these stock yards in 1896, there would have been a deficit to the Stock Yards Company instead of an income from feed. In the native-cattle yards, which are valued by the Master at about $3,500,000, the entire net earnings would have been only about $30,000, or less than one per cent. on the investment in these yards. In the hog and sheep divisions, the return would have been only about three per cent. on the values in these departments. From the costly investment of the owners of this property in the horse and mule department, there would have been a deficit. *If the property of the defendant company had been assessed for taxation at its real value in money, even as found by the Master, practically all of these small returns would have been swept away.* And even this inequitable result is only obtained by neglecting to make any provision for contingencies which are bound to arise in every such business as this. What would be left to accumulate a fund for the rebuilding of this plant after it was worn out? If it be said that such rebuilding should be paid for out of funds derived from the sale of stock, then such stock would of necessity have to be provided for and some method of paying dividends on it devised; otherwise it could not be sold. Furthermore, every one is entitled to make prudent provision for future contingencies without having to go in debt. What would be said by the financial world to an

effort by this corporation to sell its shares to renew necessary structures when the net income of the company only showed an earning capacity of about one and one-half per cent.? As was said in the Express cases by Mr. Justice Brewer, "business men do not invest their money in moonshine." The earning capacity of a plant indicates its value. These results do not indicate regulation. They prove confiscation. At what price could these owners sell so unproductive a plant? No one would buy it. It would remain unproductive, and therefore inactive; an idle monument to public rapacity! a reproach to our boasted protection against the taking of private property for public use without just compensation. For the State offers nothing to this corporation or its stockholders in exchange for this destruction of values. It says in effect to these complainants, that the stock which they could have sold in the open market, prior to the passage of this act, for at least $125 per share, shall only be worth about $30 per share. In other words, by its act the State of Kansas asserts the right to take from these appellants $95 out of the value of every share of stock of this corporation which they own. And this without giving these appellants anything whatever! These things cannot be successfully denied. No amount of theorizing can justify such results.

"In every constitution is a guaranty against taking of private property for public purposes without just compensation. The equal protection of the laws, which, by the 14th amendment, no State can deny to the individual, forbids legislation, in whatever form it may be enacted, by which the property of one individual is without compensation wrested from him for

the benefit of another or of the public. This, as has been observed, is a government of law, and not a government of men, and it must never be forgotten that under such a government, with its constitutional limitations and guaranties, the forms of law and the machinery of government, with all their reach and power, must in their actual workings stop on the hither side of an unnecessary and uncompensated taking or destruction of any private property legally acquired and legally held." (Mr. Justice BREWER, in Reagan case.)

The expenditures in 1896 are admitted to have been wisely and economically made in the interest of the stockholders; yet if these expenditures are admitted to have been made wisely, it must also be admitted that after providing for them the act leaves only two per cent. or less, as a return which can be expected by the stockholders, and this estimated on a valuation of the property very much less than its selling price.

The Master, applying the statutory rates to the receipts and disbursements of the company for 1896, allowing the expenditures of $169,584.65, as properly chargeable to the expense account for that year, makes the total receipts of 1896, for operation of stock yards only, $711,619.45, and the total disbursements for operation of stock yards $535,297.14, leaving a net income of $176,322.31, and upon his estimate of the present value of the real estate, improvements and personal property (made by him separately) of the stock yards, $5,388,-003.25, giving an income or dividend of 3.27 per cent.

But, as already stated, the real value of the property is nearly twice that of the estimate of the Master, and the rate

per cent. would be about one-half of 3.27, only 1.63 per cent. (R. 80; D.)

The Attorney-General, upon the hearing in the court below, also conceded that if the $169,584.65 for expenditures for 1896 were properly chargeable to the expenses of that year, then the rate per cent. would be only 3.27 upon the value of the property used for stock-yards purposes as estimated by the Master. (R. 80; D.)

But in order to make a profit of 3.27 per cent. yearly, the Attorney-General, as well as the Master, must destroy the value of the property as a unit and as a completed system, and then by valuing the property in use for stock-yards purposes in separate parts, make the estimate of the value thereof only $5,388,003.25. Both the Master and the Attorney-General, in their estimate of the rate per cent. to be earned upon the value of the property of the company under the statutory rates of 1897, overlooked the established rule that *"whenever separate articles of tangible property are joined together, not simply by the unity of ownership but in a unity of use, there is not infrequently developed a property, intangible though it may be, which in value exceeds the aggregate of the value of the separate pieces of tangible property."* (*Adams Express Co. v. Ohio,* 166 U. S. 185.)

The court will notice that while the Legislature of Kansas in 1897 reduced the charges for yardage and feed in the act complained of, and thereby lessened the income of the Stock Yards Company, which has millions of dollars invested in its

plant, to the amount of $300,651.77 per year, it did not change or reduce the rates of the commission-men or brokers selling stock for shippers, who have no tangible property at the stock yards "except office fixtures." Mr. Child testified:

"Q. Where does the commission-man make his profits? A. He gets a commission from the owner per head or per car-load for selling the stock.

"Q. What do they charge down there? A. They charge on cattle fifty cents a head not to exceed ten dollars a car; on hogs, six dollars per car; sheep, six dollars per car, and for double-decked cars ten dollars per car.

"Q. Those charges are in addition to the yard company's charges? A. Yes; they have nothing whatever to do with the Stock Yards Company's charges." (R. 179-180.)

When cattle are sold in the yard, the owner or shipper pays twenty-five cents per head for yardage and five cents for hay, making thirty cents in all. The average selling price for cattle in the yards in 1896 was forty dollars per head and the average selling price of hogs eight dollars per head. (R. 148.) The Stock Yards Company, having large capital and operating its yards at great expense, receives thirty cents a head for cattle sold in the yard, and the commission merchant receives fifty cents per head. The inconsistency of the Legislature of Kansas in attempting to regulate business transacted in the yards is apparent. The discrimination is all against the Stock Yards Company.

In the Ames case, 64 Fed. 165, it was said:

"Act Neb., April 12, 1893, prescribing local freight rates on roads, which reduces such rates 29.5 per cent., is invalid where

the rates prescribed are such, as to companies operating roads within the State and doing an interstate business, that there would be no net earnings from transportation of freight if such rates were applied to all their business."

"The fact that if such statute is in force, the earnings of such roads on all their business will be sufficient to pay reasonable compensation to the owners of the roads, does not render the act valid as to them; since other States and Congress may fix like rates and thus destroy their earning capacity."

"Take the Union Pacific Railway, whose net earnings for local freight seem greater than those of any other company, and by this last table [referring to table on page 185] it appears to be bonded for $70,468 per mile. The total mileage of that road within the State is 467 miles; so that if the bonded incumbrance were distributed according to the mileage, the burden resting upon the part of the road within the State of Nebraska would be $32,908,556. Six per cent. interest on this is $1,974,513, or the amount to be paid out of the earnings of the road before the stockholders are entitled to any dividends. From Exhibit 4 it appears that the receipts for all business done in the State was $5,262,057; for hauling local freight, $398,262, or about seven and one-half per cent. of the gross receipts. Local freight, therefore, should earn seven and one-half per cent. of the amount necessary to pay the interest on the bonded indebtedness resting on the lines in the State. Seven and one-half per cent on $1,974,513 is $148,088. But the net earnings for local freight that year were $173,483, showing that there was only about $25,000 earned from local freight to be distributed among the stockholders. . . . By the same table it appears that if the rates prescribed by House Roll 33 had been in force, the earnings from local freight, upon like assumption, would have been $55,996, or but little more than one-third of the amount necessary to pay the portion of the interest on the bonds properly chargeable to local freight." (*Smyth v. Ames*, 169 U. S. 466.)

SEVENTH POINT.

CONSIDERING THE CURRENT RATE OF INTEREST IN KANSAS, AND THE CHARACTER OF THE INVESTMENT OF THE STOCKHOLDERS, THE ACT OF MARCH 3d, 1897, WOULD, BY ITS NECESSARY OPERATION, DEPRIVE THE KANSAS CITY STOCK YARDS COMPANY OF THE RIGHT TO OBTAIN JUST COMPENSATION FOR THE SERVICES RENDERED BY IT, AND WOULD ALSO DENY TO SUCH COMPANY AND ITS STOCKHOLDERS THE EQUAL PROTECTION OF THE LAWS.

The gross earnings of the Stock Yards Company in 1896 were $1,023,870.20. (R. 89.) If there is deducted the sum of $11,598.98, as received from outside property, this would leave the gross income $1,012,271.22 from the property used exclusively for stock-yards purposes.

The actual disbursements or expenditures of the company, paid out of the earnings for 1896, were $537,643.70.

If taxes of $2,346.56 on outside property be deducted, the total disbursements in 1896 for stock-yards purposes only would be $535,297.14.

If the rates prescribed by the Kansas statute of 1897 had been applied to the yarding of stock and the feed sold by the company during the year 1896, the income of the Stock Yards Company for that year would have been reduced to the extent of $300,651.77. (R. 73, 945.)

A dividend of 6 per cent. was paid upon the capital stock of the company in 1896, leaving a small surplus.

It is observed in the opinion of THAYER, J., handed down, "that the legislation complained of was radical in its nature and effect, that it reduces the company's income about 50 per cent., and that it prevents it from realizing on the capital invested in its plant such a per cent. as is ordinarily realized on capital invested in other mercantile and business enterprises." (R. 945.)

Interest in Kansas is 6 per cent. per annum, but parties may contract as high as 10 per cent. per annum.

Under the decision of *Ames v. U. P. Rly. Co.*, 64 Fed. 165, if the reductions made by the act in feed and yardage are applied to all of the company's business, the income of the company would necessarily be reduced to a greater extent than $300,651.77 yearly. The aggregate of such reductions would destroy still further the earning capacity of the property. (64 Fed. 179.)

In that case, Mr. Justice BREWER remarked that "a reduction of 29½ per cent. in the rates for local freight is unjust and unreasonable to those who have invested their money in these properties." He also referred to investors in corporation stock as being entitled to a fair rate of interest.

Is not the simple legal interest of a State a fair rate?

In *Milwaukee Electric Railway & Light Co. v. City of Milwaukee*, 87 Fed. 577, it was decided that—

"An ordinance requiring a street railroad charging 5-cent fares to sell 6 tickets for 25 cents, or 25 tickets for $1, is un-

reasonable, when the road is only making yearly net earnings of 3.3 per cent. to 4.5 per cent. on its *bona fide* investment, and paying 5 per cent. interest on its bonds, in a city where the current rate of interest on first-mortgage real-estate security is 6 per cent. Such an ordinance is void, under the fourteenth amendment, as depriving the company of its property without due process of law." (Page 586.)

Mr. Justice McKenna, in *Southern Pacific Co. v. Board, &c., supra,* referred to the fact that *"all other investments are expected to return at least legal interest, with freedom besides of unlimited advantage."* (Page 261.)

Mr. Justice Harlan, in *Smyth v. Ames, supra,* remarked:

"Can it be possible that any business so carried on can suffer a reduction of 29½ per cent. in its receipts without ruin? What would any business man, engaged in any business of a private character, think of a compulsory reduction of his receipts to the amount of 29½ per cent.?" (Page 642.)

Yet in this case, it is conceded by all the parties and the court below, that the business so carried on suffers by the statute of 1897 a reduction of 50 per cent. in its receipts. The contention of the appellants is, that upon the rates and prices regulated, the business so carried on suffers by the statute of 1897 a reduction of 75 or more per cent. in its receipts.

In this connection, we call attention to the dividends declared by State and private banks in Kansas for the year 1897. These banks are under the official supervision of the Bank Commissioner of Kansas, and reports of their receipts and disbursements are officially made and published in the public

executive documents of the State. From the report for the years 1897-98, page 218, we extract the following:

"Average capital invested during the year	$6,106,665.68
Gross earnings	1,596,282.26
Per cent. of gross earnings to capital	26.13
Number of banks paying dividends	146
Capital on which dividends were paid	3,574,900.00
Average dividend paid (per cent.)	7.91 "

From the above, we ascertain that the average dividend paid on the capital stock of 146 State banks doing business in Kansas for the year ending December 31st, 1897, *was 7.91 per cent.*

From the report for the years 1897-98, page 219, we extract the following:

"Average capital invested during year	$132,943.51
Gross earnings	585,404.77
Per cent. of gross earnings to capital	44
Number of banks paying dividends	48
Capital on which dividend was paid	627,380.00
Average dividend paid (per cent.)	18.14 "

From the above we ascertain that the average dividend paid on the capital stock of 48 private banks doing business in Kansas for the year ending December 31st, 1897, *was 18.14 per cent.*

(See Receipts and Disbursements of State and Private Banks of Kansas, hereto attached as Exhibits " F " and " G.")

In Kansas in 1896 and 1897 many municipal bonds drew interest at the rate of 7, 8, and as high as 10 per cent. per annum. Chap. 90, Session Laws of Kansas of 1877, requires

the county clerks of the several counties of the State to make out annually and file with the Auditor of State a financial exhibit of their respective counties for the preceding year. This exhibit is published officially by the executive department of the State in the public documents issued by the State. (See extracts from the Auditor's Report "concerning municipal indebtedness" of the State of Kansas for 1897-98, pages 186-223, hereto attached, and marked "Exhibit H.")

It is true that various municipal bonds of the counties, townships and cities of Kansas drew interest in 1896 and 1897 at a lesser rate than those last stated, but "Exhibit H" shows the opportunities that investors had in buying securities of Kansas in the years referred to.

The Stock Yards Company, considering the business in which it is engaged, ought not to be deprived of the right to earn a dividend of at least 6 per cent., the legal rate of interest in the State of Kansas when no written contract is made by the parties for a greater rate.

Upon the facts developed, the conclusion is irresistible that the act of March 3d, 1897, deprives the Stock Yards Company of its property without due process of law, and denies to it the equal protection of the laws.

The cases of *Munn v. Illinois, supra,* and *Budd v. New York, supra,* are not controlling upon the point under discussion. In those cases, the objection was not to any improper prices "fixed by the officers, but to their right to fix prices at all." We are

now discussing the unreasonableness of the rates fixed by the act complained of.

Chicago, M. & St. P. Rly. Co. v. Minnesota, 134 U. S. 418.
Smyth v. Ames, supra.
Reagan v. Farmers' Loan & Trust Co., supra.
Milwaukee Electric Ry. Co. v. Milwaukee, supra.
Southern Pacific Co. v. Board of Comm'rs, supra.

"The reasonableness of the schedule of rates must be determined by the facts as they exist when it is sought to put such rates into operation."

Smyth v. Ames, 171 U. S. 361, 365.

Neither do we think that certain expressions used by this court in the cases of *Covington & Lexington Bridge Turnpike Road Co. v. Sanford*, 164 U. S. 578, and *Smyth v. Ames, supra*, concerning rates "just for the public," are strictly applicable to the Stock Yards Company.

The first case had reference to "a public highway established and maintained under legislative authority." In the second case, the corporation maintained a public highway given primarily for the benefit of the public; both corporations having also the authority to exercise the right of eminent domain. The Stock Yards Company has merely the privilege of carrying on its business. No special privileges, no exclusive privileges, no right of eminent domain.

In any view of the law applicable to this case, this court should, in our opinion, rule that any rates charged by the Stock Yards Company are reasonable, which produce a return or dividend to its stockholders not exceeding the simple legal

interest established by the statute of Kansas. Within that limitation, they are reasonable and "just for the public." *"All other investments are expected to return at least legal interest, with freedom besides of unlimited advantage."*

It appears that the rates and prices charged by the company are substantially the same as those charged in other yards throughout the country, and that this company is in active competition with operators of such other yards. To say the very least, this raises the strong presumption that the rates are reasonable. That presumption is not overcome by any testimony in this case.

In considering the reasonableness of the charges and prices of the Stock Yards Company, we call attention to finding No. 39 of the Master, that—

"The other stock yards heretofore referred to are operated generally in the same manner as those at Kansas City, and there is, and was for a long time prior to March 12, 1897, active and growing competition among their owners to attract and secure to each the shipment of live stock from competitive territories. Kansas City is the greatest stocker and feeder market in the world, and while Chicago exceeds it as a general market, yet, because of the expense of transportation from Kansas City there, and the loss in weight by shrinkage during such transportation, the live stock shipped to and sold at Kansas City in 1896 realized for its owners more than $1,500,000 in excess of the amount which would have been realized if forwarded from Kansas City to, and sold on the Chicago market." (R. 74.)

The amount which the stock raisers and shippers of Kansas received in 1896 for their live stock sold in the stock yards at

Kansas City over and above what they could have received for the same stock during the same time at any other market in the West, was $1,500,000. The testimony makes it $1,600,000. (R. 123.) The entire gross income of the company for 1896 was, as has been frequently stated, $1,023,870.20. The actual benefit to the live-stock trade of Kansas by having such market facilities was over $1,500,000, almost wholly due to the existence of this plant and the enterprise and business sagacity of its management.

If the public, considered in its aggregate as an individual, is not well served when such results are produced, it is difficult to see what more advantageous conditions could be devised. If a single individual had shipped to these yards from Kansas all of the live stock received at the yards from that State, and another individual, under similar conditions, had shipped the same amount of live stock to Chicago, the net results of the two transactions would have been in favor of the shipment to these yards to the extent of over $1,500,000. Expressing this same result in a little different form, the profit at Kansas City would have paid all of the expenses and left a large surplus. (R. 74.)

EIGHTH POINT.

THE BUSINESS OF THE STOCK YARDS COMPANY IS A UNIT. AN AUXILIARY DEPARTMENT OF THE YARDS MAY YIELD A SMALL INCOME, BUT BY REASON OF IMPORTANT CONNECTIONS ITS INDIRECT CONTRIBUTIONS TO THE ENTIRE SYSTEM MAY BE VERY LARGE AND PROFITABLE.

In finding No. 34 the Master has set forth at some length the contention of the Attorney-General to the effect, that as the statute simply regulates the charges which the Stock Yards Company shall be permitted to make for yardage of cattle, calves, sheep, and hogs, and prescribes the maximum prices which it shall receive for feed sold in the yard, that branch of the business which has to do with the care and handling of horses and mules should be entirely excluded from consideration in determining the question whether the rates prescribed by the statute would afford a reasonable return to the owners of the yards for such services and feed; and then adds the receipts and expenditures in the horse and mule department. (R. 71-72.)

As was aptly said by Mr. Justice SWAYNE, in *St. John v. Ry. Co.*, 22 Wallace, 136:

"The business of the road was a unit. If it had been disintegrated, as proposed by the complainant, we apprehend it would have been found that the correlations of the main system and the branches were such, and that the expenses and charges incident to the entire business and those of the several parts were so interwoven and blended, that an accurate ascertainment

of the net proceeds of the main line and any of the auxiliaries taken separately from the rest would have been impracticable. An ancillary road may be short and yield but little income, yet, by reason of it reaching to coal-fields, or from other local causes, its contributions to other roads of the series may be very large and profitable."

And so it may be in this case. *The statute in controversy does not prescribe the maximum prices which the Stock Yards Company shall receive for feed sold in the yards.* It prescribes the maximum prices which it shall receive for all feed sold. In the next place, it may well be that while the horse and mule department yields but little net income, yet by reason of its affording advantages and conveniences to shippers of live stock, its indirect contributions to the business of the Stock Yards Company may be very large and profitable. Not only this; no more reason exists for disintegrating the unit which represents the business of the stock yards, by segregating the horse and mule department, than exists for the segregation of the sheep business from the others, or the hog business from the others, or the quarantine receipts from the others.

St. John v. Ry. Co., supra.

NINTH POINT.

THE QUARANTINE DIVISION OF THE KANSAS CITY STOCK YARDS.

The acts of Congress and the regulations of the Department of Agriculture of the United States place the live stock in the quarantine division of the yards under the protection of the commerce clause of the Constitution. The State of Kansas has no power to regulate the charges for yardage in that division.

Upon the undisputed testimony, the Master made the following finding:

"The quarantine division is operated and maintained by said defendant company in conformity to the provisions of an act of Congress, and under the personal direction, as to sanitary requirements, of the U. S. Government live stock inspector, resident at the yards. Except as hereinafter stated, this division is, between the fifteenth of February and the fifteenth of November of each year, under said act and the rules and regulations of the U. S. Department of Agriculture, devoted chiefly to the care, movement, and sale of cattle originating south of a certain geographical line designated annually by the Secretary of Agriculture. Occasionally, however, these yards are used for the yarding of native cattle sold for immediate slaughter. During the year 1896 over 300,000 cattle were handled by the Stock Yards Company in this division. It is connected with the main yards by the bridge before mentioned, which spans the Kansas river. A considerable number of the cattle originating south of the quarantine line are unloaded on the east side of the Kansas river into specially designed chutes, and by the employés of the company driven across the bridge to the quarantine division and delivered to the consignee. All cattle

purchased at the quarantine division by the beef-packing establishments heretofore mentioned located in Missouri, are driven by the purchaser from said division across the bridge, and over and along the alleys and viaducts of the defendant company to said packing establishment. The geographical line heretofore referred to lies south of the southern boundary of Kansas." (R. 69.)

The quarantine division of the stock yards is in Kansas, and cattle sent to that division on their arrival in the yards are under the protection of the commerce clause of the Constitution of the United States. They retain the character impressed upon them by this fact, although detained in the yards an indefinite period of time, on account of the effect of several acts of Congress and the rules and regulations of the Department of Agriculture made in pursuance thereof. We refer to the following acts:

"AN ACT for the establishment of a Bureau of Animal Industry, to prevent the exportation of diseased cattle, and to provide means for the suppression and extirpation of pleuro-pneumonia, and other contagious diseases among domestic animals.

"*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the Commissioner of Agriculture shall organize in his Department a Bureau of Animal Industry, and shall appoint a Chief thereof, who shall be a competent veterinary surgeon, and whose duty it shall be to investigate and report upon the condition of the domestic animals of the United States, their protection and use, and also inquire into and report the causes of contagious, infectious and communicable diseases among them, and the means for the prevention and cure of the same, and to collect such information on these subjects as shall be valuable to the agricultural and commercial interests of the country; and

the Commissioner of Agriculture is hereby authorized to employ a force sufficient for this purpose, not to exceed twenty persons at any one time. The salary of the chief of said Bureau shall be three thousand dollars per annum; and the Commissioner shall appoint a clerk for said Bureau, with a salary of one thousand five hundred dollars per annum.

"SEC. 2. That the Commissioner of Agriculture is authorized to appoint two competent agents, who shall be practical stock-raisers or experienced business men familiar with questions pertaining to commercial transactions in live stock, whose duty it shall be, under the instructions of the Commissioner of Agriculture, to examine and report upon the best methods of treating, transporting, and caring for animals, and the means to be adopted for the suppression and extirpation of contagious pleuro-pneumonia, and to provide against the spread of other dangerous, contagious, infectious and communicable diseases. The compensation of said agents shall be at the rate of ten dollars per diem, with all necessary expenses, while engaged in the actual performance of their duties under this act, when absent from their usual place of business or residence as such agent.

"SEC. 3. That it shall be the duty of the Commissioner of Agriculture to prepare such rules and regulations as he may deem necessary for the speedy and effectual suppression and extirpation of said diseases, and to certify such rules and regulations to the executive authority of each State and Territory and invite said authorities to coöperate in the execution and enforcement of this act. Whenever the plans and methods of the Commissioner of Agriculture shall be accepted by any State or Territory in which pleuro-pneumonia or other contagious, infectious or communicable disease is declared to exist, or such State or Territory shall have adopted plans and methods for the suppression and extirpation of said diseases, and such plans and methods shall be accepted by the Commissioner of Agriculture, and whenever the Governor of a State or other properly constituted authorities signify their readiness to coöperate for the

extinction of any contagious, infectious, or communicable disease in conformity with the provisions of this act, the Commissioner of Agriculture is hereby authorized to expend so much of the money appropriated by this act as may be necessary in such investigation and in such disinfection and quarantine measures as may be necessary to prevent the spread of the disease from one State or Territory to another.

"SEC. 4. That in order to promote the exportation of live stock from the United States the Commissioner of Agriculture shall make special investigation as to the existence of pleuro-pneumonia, or any contagious, infectious, or communicable disease, along the dividing lines between the United States and foreign countries and along the lines of transportation from all parts of the United States to ports from which live stock are exported, and make report of the results of such investigation to the Secretary of the Treasury, who shall from time to time establish such regulations concerning the exportation and transportation of live stock as the results of said investigations may require.

"SEC. 5. That to prevent the exportation from any port of the United States to any port in a foreign country of live stock affected with any contagious, infectious, or communicable disease, and especially pleuro-pneumonia, the Secretary of the Treasury be, and he is hereby, authorized to take such steps and adopt such measures, not inconsistent with the provisions of this act, as he may deem necessary.

"SEC. 6. That no railroad company within the United States or the owners or masters of any steam or sailing or other vessel or boat, shall receive for transportation or transport, from one State or Territory to another, or from any State into the District of Columbia, or from the District into any State, any live stock affected with any contagious, infectious, or communicable disease, and especially the disease known as pleuro-pneumonia; nor shall any person, company or corporation deliver for such

transportation to any railroad company, or master or owner of any boat or vessel, any live stock, knowing them to be affected with any contagious, infectious or communicable disease; nor shall any person, company or corporation drive on foot or transport in private conveyance from one State or Territory to another, or from any State into the District of Columbia or from the District into any State, any live stock, knowing them to be affected with any contagious, infectious or communicable disease, and especially the disease known as pleuro-pneumonia: *Provided,* That the so-called splenetic or Texas fever shall not be considered a contagious, infectious or communicable disease within the meaning of sections four, five, six and seven of this act, as to cattle being transported by rail to market for slaughter, when the same are unloaded only to be fed and watered in lots on the way thereto.

"SEC. 7. That it shall be the duty of the Commissioner of Agriculture to notify, in writing, the proper officials or agents of any railroad, steamboat, or other transportation company doing business in or through any infected locality, and by publication in such newspapers as he may select, of the existence of said contagion; and any person or persons operating any such railroad, or master or owner of any boat or vessel, or owner or custodian of or person having control over such cattle or other live stock within such infected district, who shall knowingly violate the provisions of section six of this act, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred nor more than five thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment.

"SEC. 8. That whenever any contagious, infectious or communicable disease affecting domestic animals, and especially the disease known as pleuro-pneumonia, shall be brought into or shall break out in the District of Columbia, it shall be the duty of the Commissioners of said District to take measures to sup-

press the same promptly and to prevent the same from spreading; and for this purpose the said Commissioners are hereby empowered to order and require that any premises, farm, or farms where such disease exists, or has existed, to be put in quarantine; to order all or any animals coming into the District to be detained at any place or places for the purpose of inspection and examination; to prescribe regulations for and to require the destruction of animals affected with contagious, infectious or communicable disease, and for the proper disposition of their hides and carcasses; to prescribe regulations for disinfection, and such other regulations as they may deem necessary to prevent infection or contagion being communicated, and shall report to the Commissioner of Agriculture whatever they may do in pursuance of the provisions of this section.

"SEC. 9. That it shall be the duty of the several United States district attorneys to prosecute all violations of this act which shall be brought to their notice or knowledge by any person making the complaint under oath; and the same shall be heard before any district or circuit court of the United States or Territorial court holden within the district in which the violation of this act has been committed.

"SEC. 10. That the sum of one hundred and fifty thousand dollars, to be immediately available, or so much thereof as may be necessary, is hereby appropriated, out of any moneys in the treasury not otherwise appropriated, to carry into effect the provisions of this act.

"SEC. 11. That the Commissioner of Agriculture shall report annually to Congress, at the commencement of each session, a list of the names of all persons employed, an itemized statement of all expenditures under this act, and full particulars of the means adopted and carried into effect for the suppression of contagious, infectious or communicable diseases among domestic animals.

"Approved May 29, 1884." (23 R. S. 31.)

"AN ACT to provide for the inspection of live cattle, hogs, and the carcasses and products thereof which are the subjects of interstate commerce, and for other purposes.

"*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the Secretary of Agriculture shall cause to be made a careful inspection of all cattle intended for export to foreign countries from the United States, at such times and places and in such manner as he may think proper, with a view to ascertaining whether such cattle are free from disease; and for this purpose he may appoint inspectors, who shall be authorized to give an official certificate clearly stating the condition in which such animals are found, and no clearance shall be given to any vessel having on board cattle for exportation to a foreign country unless the owner or shipper of such cattle has a certificate from the inspector herein authorized to be appointed, stating that said cattle are sound and free from disease.

"SEC. 2. That the Secretary of Agriculture shall also cause to be made a careful inspection of all live cattle the meat of which is intended for exportation to any foreign country, at such times and places and in such manner as he may think proper, with a view to ascertain whether said cattle are free from disease and their meat sound and wholesome; and may appoint inspectors, who shall be authorized to give an official certificate clearly stating the condition in which such cattle and meat are found, and no clearance shall be given to any vessel having on board any fresh beef for exportation to and sale in a foreign country from any port of the United States, until the owner or shipper shall obtain from an inspector appointed under the provisions of this act such certificate.

"SEC. 3. The Secretary of Agriculture shall cause to be inspected prior to their slaughter, all cattle, sheep and hogs which are subjects of interstate commerce and which are about to be slaughtered at slaughter-houses, canning, salting, packing or rendering establishments in any State or Territory, the car-

casses or products of which are to be transported and sold for human consumption in any other State or Territory, or the District of Columbia; and in addition to the aforesaid inspection, there may be made in all cases where the Secretary of Agriculture may deem necessary or expedient, under rules and regulations to be by him prescribed, a post-mortem examination of the carcasses of all cattle, sheep and hogs about to be prepared for human consumption at any slaughter-house, canning, salting, packing or rendering establishment in any State or Territory, or in the District of Columbia, which are the subjects of interstate commerce.

"SEC. 4. That said examination shall be made in the manner provided by rules and regulations to be prescribed by the Secretary of Agriculture, and after said examination the carcasses and products of all cattle, sheep and swine found to be free of disease, and wholesome, sound, and fit for human food, shall be marked, stamped or labeled for identification as may be provided by said rules and regulations of the Secretary of Agriculture. Any person who shall forge, counterfeit, or knowingly and wrongfully alter, deface, or destroy any of the marks, stamps or other devices provided for in the regulations of the Secretary of Agriculture, of any such carcasses or their products, or who shall forge, counterfeit, or knowingly and wrongfully alter, deface or destroy any certificate provided for in said regulations, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

"SEC. 5. That it shall be unlawful for any person to transport from one State or Territory or the District of Columbia into any other State or Territory or the District of Columbia, or for any person to deliver to another for transportation from one State or Territory or the District of Columbia into another State or Territory or the District of Columbia, the carcasses of any cattle, sheep or swine, or the food products thereof,

which have been examined in accordance with the provisions of sections three and four of this act, and which on said examination have been declared by the inspector making the same to be unsound or diseased. Any persons violating the provisions of this section shall be deemed guilty of a misdemeanor, and punished for each offense as provided in section four of this act.

"SEC. 6. That the inspectors provided for in sections one and two of this act shall be authorized to give official certificates of the sound and wholesome condition of the cattle, sheep, and swine, their carcasses and products, described in sections three and four of this act, and one copy of every certificate granted under the provisions of this act shall be filed in the Department of Agriculture, another copy shall be delivered to the owner or shipper, and when the cattle, sheep and swine or their carcasses and products are sent abroad, a third copy shall be delivered to the chief officer of the vessel on which the shipment shall be made.

"SEC. 7. That none of the provisions of this act shall be so construed as to apply to any cattle, sheep or swine slaughtered by any farmer upon his farm, which may be transported from one State or Territory or the District of Columbia into another State or Territory or the District of Columbia: *Provided, however,* That if the carcasses of such cattle, sheep or swine go to any packing or canning establishment and are intended for transportation to any other State or Territory or the District of Columbia, as hereinbefore provided, they shall there be subject to the post-mortem examination provided for in sections three and four of this act.

"Approved March 3, 1891." (26 R. S. 1089.)

Section 2 of the Revised Statutes, Vol. 28, p. 732, 1895, for the inspection by the Department of Agriculture, is as follows:

"That the Secretary of Agriculture shall also cause to be made a careful inspection of all live cattle, the meat of which,

fresh, salted, canned, corned, packed, cured, or otherwise prepared, is intended for exportation to any foreign country, at such times and places, and in such manner as he may think proper, with a view to ascertain whether said cattle are free from disease, and their meat sound and wholesome, and may appoint inspectors who shall be authorized to give an official certificate clearly stating the condition in which such cattle and meat are found, and no clearance shall be given to any vessel having on board any fresh, salted, canned, corned, or packed beef being the meat of cattle killed after the passage of this act for exportation to and sale in a foreign country from any port in the United States, until the owner or shipper shall obtain from an inspector appointed under the provisions of this act a certificate that said cattle were free from disease and that their meat is sound and wholesome."

And section four is—

"That said examination shall be made in the manner provided by rules and regulations to be prescribed by the Secretary of Agriculture, and after said examination the carcasses and products of all cattle, sheep, and swine found to be free of disease and wholesome, sound, and fit for human food, shall be marked, stamped or labeled for identification as may be provided by said rules and regulations of the Secretary of Agriculture. Any person who shall forge, counterfeit, simulate, imitate, falsely represent, or use without authority, or knowingly and wrongfully alter, deface or destroy any of the marks, stamps or other devices provided for in the regulations of the Secretary of Agriculture, of any such carcasses or their products, or who shall forge, counterfeit, simulate, imitate, falsely represent, or use without authority, or knowingly and wrongfully alter, deface or destroy any certificate or stamp provided in said regulations, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding one thousand dollars or imprisonment not exceeding one

year, or by both said punishments, in the discretion of the court."

"The Secretary of Agriculture is hereby authorized to make such rules and regulations as he may decide to be necessary to prevent the transportation from one State or Territory or the District of Columbia into any other State or Territory or the District of Columbia, or to any foreign country, of the condemned carcasses or parts of carcasses of cattle, sheep and swine which have been inspected in accordance with the provisions of this act. Any person, company or corporation owning or operating any such slaughter-house, abattoir, or meat-curing, packing or canning establishment, or any employé of the same, that shall willfully violate any provision of this act, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished for each offense by a fine not exceeding one thousand dollars or imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

On January 27, 1897, the Secretary of Agriculture, in pursuance of the acts of Congress, fixed the quarantine line as follows:

"All that country lying south or below a line beginning with the northwest corner of the State of California, thence east, south and southeasterly along the boundary line of said State of California to the southeastern corner of said State, thence southerly along the western boundary of Arizona to the southwest corner of Arizona, thence along the southern boundary of Arizona and New Mexico to the southeastern corner of New Mexico, thence northerly along the eastern boundary of New Mexico to the southern line of the State of Colorado, thence along the southern boundary line of Colorado and Kansas to the southeastern corner of Kansas," etc.

In the same circular it is provided that "from the 15th day of February to the 15th day of November inclusive, during

each year, no cattle are to be transported from said area south or below said Federal quarantine line, above described, to any portion of the United States above, north, east or west of the above-described line, except by rail for immediate slaughter; and when so transported the following regulations must be observed:

"1. When any cattle in course of transportation from said area are unloaded above, north, east or west of this line to be fed or watered, the places where said cattle are to be fed or watered shall be set apart, and no other cattle shall be admitted thereto.

"2. On unloading said cattle at their points of destination, pens sufficiently isolated shall be set apart to receive them, and no other cattle shall be admitted to said pens; and the regulations relating to the movement of cattle from said area prescribed by the cattle sanitary officers of the State when unloaded shall be carefully observed."

Careful provision is further made for disinfecting the cars.

In the same circular it is further required that "stock yards companies receiving such cattle—that is, cattle affected by Texas fever—shall place the same in pens for the use of such cattle." (R. 806.)

A circular dated June 14, 1895, provides that animals "found" diseased or unfit for human food shall be marked by placing in the ear a metal tag bearing "U. S. condemned," and a serial number, "and shall by permit signed by the inspector" be removed to rendering-works designated by him, and there killed under the supervision of an employé of the Bureau of

Animal Industry, and rendered so that their products are unfit for human food.

In pursuance of these directions, or, speaking more accurately, in accordance with previous directions to the same effect from the Department, this company established quarantine yards, the location of which and access to which have already been described. (R. 361-362, 804-811.)

Albert Dean, whose testimony will be found on pages 599, *et seq.*, of the record, says he is the live-stock agent of Animal Industry, United States Department of Agriculture, and as such has charge of the movement of southern cattle, with office at the Kansas City Stock Yards, and with twelve assistants. He further says that cattle from the quarantine area do not begin to arrive at the yards until about June, and are the cattle that bring this disease; that such cattle are permitted to come north only for the purpose of immediate slaughter, explaining afterwards that they may be shipped to other points for immediate slaughter as well as at these yards. Special dumping-grounds for litter from the quarantine yards, remote from other yards, are carefully provided and maintained on the company's lands, unoccupied for other purposes. (R. 599-600.)

Native cattle—that is, cattle from regions north of the quarantine line—are not permitted in these yards or near these dumping-grounds. Mr. Dean further states that he and his officers know where the quarantined animals, which he calls infected animals, go.

After cattle in these yards are sold to packers for immediate slaughter, they are driven through fenced roadways, through which no cattle are permitted to pass except such as are for immediate slaughter. All of the requirements of the Department and its inspectors are loyally obeyed by the Stock Yards Company.

Many circulars have been issued by the Department regulating yards into which quarantine cattle are received, but it does not appear worth while to set them out here, or further refer to their provisions. (R. 804-811.) Enough has been shown to make the following circumstances clear:

1. In pursuance of the acts of Congress and the regulations of the Department of Agriculture, the company has provided yards for the accommodation of southern cattle, remote from its other yards, which cannot be availed of for the care of other stock, and special dumping-grounds have been provided, from which all native cattle are kept at a great distance.

2. While cattle are in the quarantine yards they are subject to the inspection of the Government officer; infected animals properly marked, and when condemned as unfit for human food, are, under his direction, sent to rendering establishments for slaughter, and subjected to processes which make the use of the product for food impossible.

3. Other animals sold to packers are driven from the yards, by ways used only for the purpose, to the packing-houses for immediate slaughter. So that they are isolated from all other

animals from their shipment and while passing through the yards until killed in the slaughter-houses.

It is obvious from these circumstances that during this period of time the Government retains over all this class of cattle a strict surveillance and control, regulating their transportation, yardage, sale, and slaughter. (See testimony of Albert Dean, R. 599-605, and also Regulations of the Department of Agriculture concerning quarantine line and cattle, R. 804-811.)

The question is, whether such stock during this period can be in any way interfered with by the State?

It may be said to be a well-ascertained and accepted proposition, that when property is in the hands of officers of the Government, or subject to their regulation and control in pursuance of acts of Congress, no State authority can be asserted over it, providing, of course, that the legislation of Congress is within its constitutional competency. It is to be remembered that while the stock is in quarantine all of the charges of the company, those for yardage and those for feed, accrue. No services are rendered for which charges are made after the packers take possession of the stock to drive it to their houses. Accordingly it is apparent that the act of which we complain attempts to deal with these cattle while they are within the jurisdiction of the United States. For which reason we denounce the act as beyond the legislative powers of the State.

The act of Congress and the regulations of the Department impose upon the company serious and extraordinary expenses. (R. 361-362.) *Not only are necessary services of a special*

character called for in the care of quarantined cattle, but losses are incurred, often serious in amount, by reason of the company being compelled to let valuable property lie idle without compensation. When Congress imposes such burdens upon the company, the State cannot be permitted to intervene and reduce the company's charges. If Congress is competent to throw these burdens upon the company, the Federal jurisdiction is plenary, and excludes that of the State.

The same point may be put in another way. It is obvious that Congress has regulated stock yards, to the extent at least of prescribing rules by which the use of portions of such yards shall be governed. Under these rules the use of a large amount of property owned by this company is appropriated to the exclusive care of interstate quarantine cattle. The appropriation to this particular purpose excludes the public generally from the use of the quarantine yards as a place where cattle may be exposed for sale. The State statute attempts to prescribe a rule by which the use of this same property shall be governed. Accordingly the question is: Where by an act of Congress property is appropriated to a particular purpose, can the State regulate the charge for its use for that purpose? When the Government imposes a burden upon the Stock Yards Company under its quarantine and inspection laws, and the regulations made in pursuance thereof, can the State of Kansas enact "that there shall be but one yardage charged," or fix or limit the charges for yardage in the quarantine division?

In addition to the operating and maintaining of the quar-

antine yards, the Stock Yards Company also maintains what is known as a "sheep-dip," which is used by owners of sheep at the yards in Kansas in compliance with the terms of rules established by the Department of Agriculture under the act heretofore mentioned, the operation and maintenance of which appliance is a source of expense which must be paid out of the rates and charges which the Kansas act attempts to regulate. (R. 119.)

The cost of the sheep-dipping plant was "about twelve thousand dollars." The water furnished has to be hot, ordinarily at 105°, with a curative agent mixed with it. The Stock Yards Company furnishes a furnace for the heating, and also fuel; and the compensation for the sheep-dip, etc., is included in the yardage. (R. 119.)

Where Congress legislates upon a subject within its constitutional power, such legislation cannot be supplemented by the State. Under all of the authorities, the individual States are precluded from adding anything to the regulations which Congress has seen fit to make upon this subject.

In the case of the *Missouri, K. & T. R. Co. v. Haber,* 169 U. S. 613, the doctrine is recognized that where the National Government, acting within the limits of its constitutional authority, takes under its immediate control and exclusive supervision the entire subject to which State regulation refers, a State statute of regulation would conflict therewith.

In the case of *The Covington & Cincinnati Bridge Company v. Kentucky,* 154 U. S. 204, it was decided that the statute of

Kentucky prescribing a schedule of charges over a bridge spanning the Ohio river and connecting the States of Ohio and Kentucky, was such a regulation as to interfere with interstate commerce. Therefore, in this case, the statute complained of is such a regulation as interferes with the acts of Congress and the regulations of the Bureau of Animal Industry promulgated thereunder.

TENTH POINT.

THE BUSINESS OF THE KANSAS CITY STOCK YARDS COMPANY IS DIRECTLY CONNECTED WITH INTERSTATE COMMERCE.

The business of the company, which is regulated by the act of 1897, is divisible into several distinct classes as follows:

1. Stock consigned to points beyond Kansas and Missouri comes to the yards by rail, where it lies over for rest, water and feed, and is afterwards sent forward to destination by the roads named in the bill of lading. For its services in caring for, watering and feeding such stock, the company is paid by the railroads, which reimburse themselves from the consignee.

The Master, in finding No. 30, reports the following:

"In 1896 there were received at the stock yards about 100,000 head of live stock, consigned by the shipper, to be transported by the railroads connecting with the tracks of the Stock Yards Company, to points in States other than Kansas or Missouri. All of said live stock was unloaded by the defendant company, cared for, rested, watered and fed, and, when necessary, moved by it over, along and upon its alleys, viaducts, tunnels and bridge, to the outgoing railroad named in the bill of lading accompanying said stock, to be transported to the point of final destination. All of the expenses connected with the caring for, feeding and watering of such live stock was paid to the Stock Yards Company by the railroad companies, and by them ultimately collected from the consignee." (R. 68-69.)

2. Stock originating south of Kansas on its arrival at the yards is, by acts of Congress and regulations of the Department

of Agriculture, taken in charge by officers of the United States, whereupon it is driven to the special yards and pens of the company, which are called the "quarantine division."

(*This division, and the burdens imposed upon the company by acts of Congress and the regulations of the Department of Agriculture, have already been sufficiently referred to and commented upon.*)

3. Stock is shipped from points in other States to the yards, where it is sold by the consignee or by commission-men as agents of the owner.

4. Stock originating at points in Kansas is shipped on through bills to Chicago and other eastern points, with the privilege of lying over in the yards and of being sold therein.

5. Stock is shipped from points in Kansas to the yards for sale therein.

The first class of cases mentioned in the point under discussion is that of stock shipped from points in Kansas and other States on through bills of lading to Chicago or other points in the Eastern States, and lies over in the yards of the Stock Yards Company, which that company unloads, rests, waters and feeds, and, presumably after a brief time, reloads and delivers to the road over which it is routed, which road transports it to destination. These services are rendered in pursuance of a contract between the Stock Yards Company and the railroads, which pay for these services to the company. From the time the doors of the cars are unlocked when the stock is unloaded, to the time they are locked again when the stock is

reloaded, the Stock Yards Company is responsible to the railroads for the stock, so that if in case of any shipment an animal is lost by becoming mixed with other stock, or is injured or killed, the company must pay the damage to the proper road.

The question is, whether the delay of the stock in the yards for the purpose of rest, water and feed, and the fact that these services are, under the circumstances, rendered by the Stock Yards Company and not by the railroads, merges the stock in the general mass of the property of the community, so that while it is in the yards it is not within the commerce clause of the Constitution.

1. It will be convenient to first consider the status of the property, as if the service of unloading, caring for, resting, watering and feeding the stock were rendered by the railroads. The duty to render these services is imposed upon railroads by the act of Congress entitled "An act to prevent cruelty to animals while in transit by railroad or other means of transportation within the United States," approved March 3, 1873, (17 St. 584,) and is sections 4386-4390 of the Revised Statutes, and is as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That no railroad company within the United States whose road forms any part of a line of road over which cattle, sheep, swine or other animals shall be conveyed from one State to another, or the owners or masters of steam, sailing, or other vessels carrying or transporting cattle, sheep, swine, or other animals from one State to another, shall confine the same in cars, boats, or vessels of any description, for a longer period than twenty-eight

consecutive hours, without unloading the same for rest, water and feeding, for a period of at least five consecutive hours, unless prevented from so unloading by storm or other accidental causes. In estimating such confinement, the time during which the animals have been confined without such rest on connecting roads from which they are received shall be included, it being the intent of this act to prohibit their continuous confinement beyond the period of twenty-eight hours, except upon contingencies hereinbefore stated. Animals so unloaded shall be properly fed and watered during such rest by the owner or person having the custody thereof, or in case of his default in so doing, then by the railroad company or owners, or masters of boats or vessels transporting the same at the expense of said owner or person in custody thereof; and said company, owners or masters shall in such cases have a lien upon such animals for food, care and custody furnished, and shall not be liable for any detention of such animals authorized by this act. Any company, owner or custodian of such animals who shall knowingly and willfully fail to comply with the provisions of this act shall, for each and every such failure to comply with the provisions of this act, be liable for and forfeit and pay a penalty of not less than one hundred nor more than five hundred dollars: *Provided, however,* That when animals shall be carried in cars, boats, or other vessels in which they can and do have proper food, water, space, and opportunity for rest, the foregoing provisions in regard to their being unloaded shall not apply.

"SEC. 2. That the penalty created by the first section of this act shall be recovered by civil action in the name of the United States, in the Circuit or District Court of the United States holden withhin the district where the violation of this act may have been committed, or the person or corporation resides or carries on its business; and it shall be the duty of all United States marshals, their deputies and subordinates, to

prosecute all violations of this act which shall come to their notice or knowledge.

"SEC. 3. That any person or corporation entitled to lien under the first section of this act may enforce the same by a petition filed in the District Court of the United States holden within the district where the food, care and custody shall have been furnished, or the owner or custodian of the property resides; and said court shall have power to issue all suitable process for the enforcement of such lien by sale or otherwise, and to compel the payment of all costs, penalties, charges and expenses of proceedings under this act.

"SEC. 4. That this act shall not go into effect until the first day of October, eighteen hundred and seventy-two."

The act asserts the jurisdiction of the United States during the period of the delay in the transportation of the stock. It does so not only by arresting the continuous carriage, but by declaring what shall be done during the period of detention; namely, that "the animals so unloaded shall be properly fed and watered during such rest," and exempts the railroad company from liability for the detention. If goes farther than that. It gives the railroad "a lien upon the animals for food, care and custody furnished," and confers jurisdiction upon the proper United States District Court to enforce such lien. And again, if any railroad transporting stock from one State to another does not give it rest for the prescribed time with feed and water, it is liable to severe penalties, and the duty is specially imposed upon the "United States marshals, their deputies and subordinates, to prosecute all violations which come to their notice or knowledge."

On what possible ground can the validity of this act be sustained, if, while the stock is detained, it is not within the commerce clause of the Constitution? If during that time the stock becomes merged in the mass of property of the community, Congress could not give to the carrier a right to charge for the services rendered by him, any more than it could for services rendered in respect of any other property in the State: especially could it not give a lien on the property for its charges or a right of action in the Federal courts to enforce such lien.

If anything further need be said, attention may be given to the contract of the parties. The owner of property who delivers it to the railroad at a point in one State to be transported to a point in another State, and the railroad which receives it for that purpose, enter into a contract expressed in the bill of lading for continuous carriage. The property is at once impressed with the character of commerce among the States. There is no intention on the part of either that the property shall, while on its way, lapse from that character and become merged in the mass of property in the community and be subject to the State jurisdiction. It would not be pretended that an accident, such as a collision or a flood which interrupted the continuous transportation, would have such effect. Nor would a delay at the terminus of one road caused by a glut of business in its yards, or by any other such like cause. In all these cases, for the purposes of the commerce clause of the Constitution, the transportation is to be deemed continuous although temporarily

interrupted. In short, the stock is being transported when at rest as well as when traveling.

If this were not true, there would be no end to the confusion in which the commerce of the country would be involved. At every point in the course of the transportation of property from one State to another, often upon the most slender pretext, the Federal and State authorities would come in collision, and parties concerned in such transportation would not know to which of them they should submit themselves. A way would at last have been found for imposing upon interstate commerce trammels which would be effective for suppressing it. The object of the commerce clause of the Constitution, and one of the principal reasons for the adoption of that instrument, would be defeated.

2. Thus far, the case has been considered as if the railroads provided the facilities for resting, watering and feeding the stock and rendered those services. Instead of doing so themselves, they find it more convenient to employ the Stock Yards Company to do so; and the question is, whether that circumstance changes the case.

It would be the narrowest and most unreasonable construction to say that the act of Congress requires the roads to render these services themselves and cannot employ another for the purpose.

The public is not concerned in the question who renders the services, so long as they are adequately performed. The shipper employs the railroad to transport his stock, and also rest, water

and feed it, and pays the road therefor; he has no relations or connections with the Stock Yards Company; he looks to the railroad company, which is liable to him for all the delinquencies of its agent. His rights are not impaired by the arrangement made by the road. On the other hand, it is often to the advantage of the railroad company, instead of rendering these services itself, to employ a stock yards company to do so. Feeding-yards and their operation, by employing a competent force, require large expenditures which the railroad company may very well wish to save. At the same time, a stock yards company already has yards for its other business, and maintains a trained force therefor, and can afford to do the business and charge for it less than it would cost the railroad to do it. Every consideration is in favor of leaving the railroad free to do the business itself, or employ another to do it for it. Accordingly, the Stock Yards Company's charges should no more be interfered with by the State than those of the railroads, if they rendered the services required by the statute.

In the *Covington Stock Yards Company v. Keith,* 139 U. S. 198, the Kentucky Central Railroad Company refused to receive at Covington, stock for transportation only through the yards of the Stock Yards Company, for which it paid that company and charged the amount against shippers. Mr. Justice HARLAN, in the course of his opinion, speaking for the court, said "it did not concern them [*i. e.*, the plaintiffs, who were shippers, and as such were compelled to pay the charges] whether the railroad company itself maintained stock yards, or

employed another company or corporation to supply the facilities for receiving and delivering live stock which it was under obligation to the public to furnish."

In *Cook v. Pennsylvania*, 97 U. S. 566, the question was, whether an act of the Legislature of that State was valid which required Cook, who was a licensed auctioneer, to pay into the State treasury three-quarters of one per cent. of the proceeds of the sale of imported goods, and the action was to recover those moneys from Cook. He claimed that "the sales of foreign goods are exempt from taxation, because said acts of Assembly, so far as they relate to such taxation, are in direct conflict with sections 8 and 9 of article 1 of the Constitution of the United States, and for that and other reasons, are void;" and inasmuch as the foreign goods so taxed as aforesaid were sold in bulk as they were imported by the importer, said defendant Cook acted only as his salesman.

Mr. Justice MILLER delivered the opinion of the court, and showed very clearly that in effect a license fee was a tax upon the imports, just as much when the sale is made by the auctioneer (that is, by the agent of the importer) as by the owner of the property himself. The learned judge cited a large number of cases for the purpose of showing that when the burden of the duty fell ultimately upon the importation, it was an interference with interstate commerce.

In *McCall v. California*, 136 U. S. 104, the question was whether the agent of a railroad between Chicago and New York, located in San Francisco, for the purpose of inducing passen-

gers going from San Francisco to New York to take his line at Chicago, but not engaged in selling tickets for his road or receiving or paying out money on account of it, is an agency of interstate commerce, and whether a license tax imposed upon him for the privilege of doing business in San Francisco is a tax upon interstate commerce. Mr. Justice LAMAR delivered the opinion of the court, in the course of which he said:

"If the business of the railroad company in carrying passengers by rail between Chicago and New York and intermediate points in both directions is interstate commerce, as much so as is the carrying of freight, it follows that the soliciting of passengers to travel over that route was a part of the business of securing the passenger traffic of the company. The object and effect of his soliciting agency were to swell the volume and business of the road. It was one of the means by which the company sought to increase and doubtless did increase its interstate passenger traffic."

In both these cases the party against whom the charge was made was the agent, in one case of the importer, and in the other of the railroad, and was just as much protected by the commerce clause of the Constitution as his principal.

In the case of *The Daniel Ball*, 10 Wallace, 557, it is said:

"Inasmuch as her agency in the transportation was entirely within the limits of the State, and she did not run in connection with or in contention of any line of vessels or railway leading to other States, it is contended that she was engaged entirely in domestic commerce. But this conclusion does not follow. So far as she was employed in transporting goods destined for other States or goods therefrom without the limits of Michigan and destined to places within that State, she was engaged in

commerce between States, and however limited that commerce may have been, she was, so far as it went, subject to the legislation of Congress. She was employed as an instrument of that commerce, *for whenever an article has begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced.* The fact that several different and independent agencies are employed in transporting the commodity, some acting entirely in one State and some acting in two or more States, does in no respect affect the character of the transaction. To the extent in which each agency acts in that transportation it is subject to the regulation of Congress. . . . If its authority does not extend to an agency in such commerce when that agency is confined within the limits of a State, its entire authority over any such commerce may be defeated."

This decision has not only been frequently approved by this court, but, as we have seen, it has ripened into positive law by the passage of the act of February 4, 1887, entitled "An act to regulate commerce." It is hardly necessary to argue that if the authority of Congress extends to the regulation of an agency of interstate commerce, when that agency is confined in its action entirely within the limits of one State, that there can be any rational doubt that an agency such as the structure of the defendant company, comprising railroad tracks, alleys, viaducts, tunnels, and bridge, lying in two States, is within such authority.

In the case of *Walker v. Keenan,* 73 Fed. Rep. 755, Judge SHOWALTER, speaking for the United States Circuit Court of Appeals, Seventh Circuit, said (page 711):

"As incidental to its business of transporting or hauling cattle, a railroad company must provide the means of loading, un-

loading and caring for such freight pending its delivery to the consignee. The hauling the cattle from one point to another and the providing the car, track, engine and servants for that purpose, are no more a part of the service rendered by the carrier than are the loading and unloading, and the providing the appliances and servants for those purposes."

And on page 672 he says:

"In the case at bar appellants [Santa Fe R. R. Co.] with their own engines and switching-crew, removed the cars, laden with cattle, from a point in the Chicago end of their line over the track of the Union Stock Yards & Transit Company to the Union Stock Yards."

The finding of the Master, No. 21, shows that the eleven railroad companies whose tracks connect with the tracks owned and maintained by the defendant company, with their own engines and switching-crews, remove cars laden with live stock, from a point on their own tracks, both in Kansas City, Kansas, and Kansas City, Missouri, to the stock yards, and such stock, having been unloaded, rested, watered and fed by the Stock Yards Company, are reloaded into the cars of these railroad companies, and removed with such railroad companies' engines and switching-crews over the tracks of the Stock Yards Company to a point on their own tracks in Kansas or Missouri, and thence proceed on their journey to other States.

The sources of income set out in detail hereinbefore, and in the Master's report, conclusively show that large sums of money are annually derived from the sale of feed. Under its present rates, the defendant company would receive, as its entire com-

pensation for receiving, handling, storage, delivering, feeding and watering cattle in transit from one State to another, two dollars per car. (R. 114-145, 248.) As shown elsewhere, the prices fixed by the act for feed would reduce the gross income from that source nearly one-half, so that instead of getting two dollars per car for this service performed in connection with the transportation of live stock from one State to another, the defendant company would only receive one dollar and fifty cents for such service, a reduction of twenty-five per cent. It is therefore very certain that the Kansas act attempts to *directly* regulate the transportation of live stock from one State to another. It is familiar law that this cannot be done by the individual States.

Can there be any rational doubt that the Stock Yards Company's tracks, unloading-chutes, alleys, viaducts, bridge, tunnels and yards are essential parts of the means used for transporting such live stock from one State to another?

We submit, therefore, that the act of March 3d, 1897, is repugnant to and inconsistent with the Constitution and laws of the United States.

Gibbons v. Ogden, 9 Wheat., *supra.*
Welton v. Missouri, supra.
Gloucester Ferry Co. v. Pennsylvania, supra.
State Freight Tax, supra.
State Tax on Railway Gross Receipts, id. 284.
The Granger Cases, 94 U. S. 155.
Wabash Railway Co. v. Illinois, supra.

ELEVENTH POINT.

SHIPMENTS TO THE STOCK YARDS ORIGINATING IN OTHER STATES THAN KANSAS.

A large portion of shipments to the yards originates in other States than Kansas.

On arrival at the yards, the roads hauling the stock there run their engines, cars and trains from their own tracks onto those of the company and over them to its chutes, where it unloads the cars and drives the stock to pens, waters and feeds it, as the owners require. The service of what is called "yarding," includes, as has been repeatedly stated, all the services which the company renders except unloading and feeding. Only one charge is made, no matter whether the live stock remains in the pens one hour, one day, or longer.

When a sale of stock is negotiated, the stock is weighed on the company's scales by its employé. He makes a certificate showing the stock, its character, number of head, and weight. Upon this certificate the parties calculate the amount payable by the purchaser, and are thus enabled to and do consummate the sale. If the sale falls through and another is made, or if the purchaser resells in the yards, no charge is made for weighing the stock a second or any other number of times. It follows that as only one charge is made for yardage, whatever is earned by the company precedes the sale.

Now the question arises, when does this stock pass from its condition as interstate business into the mass of the property of the community, so as to become subject to the jurisdiction of the State? Does that change take place on the arrival of the stock in the yards, or when a sale is completed? That question has been determined a great many times by the Supreme Court. It received the most careful consideration in *Brown v. Maryland,* 12 Wheat. 419, where Chief Justice MARSHALL delivered one of his most luminous opinions. It was an indictment under an act of the Legislature of the State of Maryland, which provided that "all importers of foreign articles or commodities, dry goods, wares or merchandise by bale or package, or of wine, rum, brandy, whisky, and other distilled spirituous liquors, etc., . . . shall, before they are authorized to sell, take out a license," for which they are to pay $50; and in case of neglect or refusal to take out such license shall be subject to certain penalties and forfeitures. The question was whether the license was a tax upon importations which could be exacted by the State, and whether the State jurisdiction attached to the property before it was sold by the importer.

The Chief Justice said:

"If this power [that is, the commercial power of Congress] reaches the interior of a State, and may be there exercised, it must be capable of authorizing the sale of those articles which it introduces. Commerce is intercourse—one of its most ordinary ingredients is traffic. It is inconceivable that the power to authorize this traffic when given in the most comprehensive terms, with the intent that its efficiency should be complete,

should cease at the point when its continuance is indispensable to its value. To what purpose should the power to allow importation be given, unaccompanied with the power to authorize a sale of the thing imported? Sale is the object of importation, and it is an essential ingredient of that intercourse of which importation constitutes a part. It is as essential an ingredient, as indispensable to the existence of the entire thing, as importation itself. It must be considered as a component part of the power to regulate commerce. Congress has a right, not only to authorize importation, but to authorize the importers to sell. . . .

"The power claimed by the State is in its nature in conflict with that given to Congress; and the greater or less extent in which it may be exercised does not enter into the inquiry concerning its existence. We think, then, that if the power to authorize a sale exists in Congress, the conclusion that the right to sell is connected with the law permitting importation as an inseparable incident, is inevitable."

Bowman v. The Chicago & Northwestern Railway Co., 125 U. S. 465, was an action to recover damages arising from the refusal of a railway to accept at Chicago a shipment of liquors to a point in Iowa. The Railway Company defended by alleging an act of the Legislature of that State forbidding carriers to bring into it liquors from other States. Mr. Justice MATTHEWS delivered the opinion of the court, in the course of which he said:

"It is easier to think that the right of importation from abroad, and transportation from one State to another, includes by necessary implication the right of the importer to sell in unbroken packages at the place where the transit terminates, for the very purpose and motive of that branch of commerce, which consists in transportation, is that other and consequent act of

commerce which consists in the sale and exchange of the commodities transported."

Mr. Justice FIELD delivered a concurring opinion, in the course of which he said:

"That the right of importation carries with it the right to sell the article imported, does not appear to me doubtful. . . . To assert that, under the Constitution of the United States, the importation of an article of commerce cannot be prohibited by the States, and yet to hold that when imported its use and sale can be prohibited, is to declare that the right which the Constitution gives is a barren one, to be used only so far as the burden of transportation is concerned, and to be denied so far as any benefits from such transportation are sought. The framers of the Constitution never intended that a right given should not be fully enjoyed."

Leisy v. Hardin, 135 U. S. 100, was replevin of several quarter and eighth barrels of beer, which the defendant had seized in a proceeding on behalf of the State of Iowa against the defendants, under a statute which forbade any person manufacturing, selling, keeping for sale, etc., any intoxicating liquor for any purpose whatever other than as provided in the act. The beer in question was made at Peoria, in Illinois, and transported by the plaintiff from that city to Keokuk, in Iowa, in sealed kegs and cases in which the property was put up in the former city. It was offered for sale by the plaintiff, when it was seized as above stated. Mr. Chief Justice FULLER delivered the opinion of the court, and on page 124 said:

"Under our decision in *Bowman v. The Chicago etc. Railway Co., supra,* they [that is, the plaintiffs] had the right to import

this beer into that State; and, in the view which we have expressed, they had the right to sell it, by which act alone it would become mingled in the common mass of property within the State. Up to that time, we hold that in the absence of Congressional permission to do so, the State had no power to interfere by seizure or any other action, in prohibition of importation and sale by the foreign or non-resident importer."

Scott v. Donald, 165 U. S. 58, was an action for damages caused by the seizure of several packages of wine and liquor belonging to the plaintiff, which at the time of seizure were in the possession of railroad companies as common carriers, which companies had brought the same into the State of South Carolina, some from Georgia, others from Maryland, and others from New York. Mr. Justice SHIRAS delivered the opinion of the court. The learned judge reviewed a large number of judgments of the Supreme Court, particularly the two last cited, holding, upon the authority of them, that the statute which forbade the sale of liquors without a license or permit, was unconstitutional.

See also *Welton v. Missouri, supra; Walling v. Michigan,* 116 U. S. 446; *The Daniel Ball,* 10 Wall. 557; *Mobile v. Kimball,* 102 U. S. 691.

In the cases at the Circuit in which the same principle has been administered may be mentioned: *In re Saunders,* 52 Fed. 802; *In re Minor,* 69 Fed. 333; *Ex parte Loeb,* 72 Fed. 67; *Donald v. Scott,* 74 Fed. 859; *Southern Ry. Co. v. City of Asheville,* 69 Fed. 359; *Webster v. Bell,* 68 Fed. 183.

A shipment from a Western State to the yards, under the

principle declared in these and many other cases is impressed with the character of interstate commerce from the point at which it is shipped until it is sold in the yards. At no point and at no moment does it come within the jurisdiction of the State, so as to be subject thereto in respect to the charges made for its transportation, until sold and the transaction of sale has been completed. As all the charges of the company are for the services rendered and material sold prior to that time, the act here complained of which attempts to regulate its charges, infringes the commerce clause of the Constitution, and is therefore void.

TWELFTH POINT.

LIVE STOCK ORIGINATING IN ONE STATE CONSIGNED ON A THROUGH BILL OF LADING TO ANOTHER STATE, AND STOPPED IN TRANSIT FOR EXPOSURE TO SALE AT A CONVENIENT MARKET, ARE SUBJECTS OF INTERSTATE COMMERCE, NO REGULATION OF WHICH CAN BE PRESCRIBED BY THE STATE WHEREIN SUCH STOCK ARE EXPOSED FOR SALE PRIOR TO SUCH SALE.

In 1896, about 2,000,000 head of live stock arrived at the yards, originally consigned by the shippers thereof to States other than Kansas or Missouri. The Master made the following finding upon this subject:

"In addition to the live stock mentioned in finding No. 30, about 40 per cent. of all the stock received at the Kansas City Stock Yards in 1896 was originally consigned to other States than Kansas, but with the right to expose said property for sale at Kansas City. With the exception of about 100,000 head, described in finding No. 30, the live stock so billed through was sold at the Kansas City Stock Yards. All of the services in and about the handling of all live stock by the defendant company at the yards was and is performed prior to its sale, except driving to cars to be loaded, and all the fees and charges made by the company mentioned in the exception last herein set out, were and are earned prior to its sale." (Finding No. 32, R. 69.)

It is very certain that such business is impressed with the character of interstate commerce when delivered to the carrier at point of origin, when he issues a through bill, and it retains that character when delivered by the road to the company. Until it is sold, which as we have seen is after the services have

been rendered, the character of the shipment or of the service does not undergo any change. This may be illustrated: Suppose the act related only to shipments originating at a point within the State and consigned to these yards, which we admit would be within the competency of the Legislature; but there were interstate shipments for which the company imposed other charges, either higher or lower. If a shipment were received on a through bill the charges would be accordingly. If any were sold in the yards, the charges for yardage and weighing would be on the same basis, because they are for services rendered before the sale, and they would not be changed by anything transpiring afterwards; otherwise the company could not know whether it was to receive the statutory rates until the sale was completed. Dealing under a contract, it could not know what the contract was until it had performed its part of it. The uncertainty and confusion of such a course of dealing illustrates the absurdity of the proposition that such business can, for the purpose of this company, be characterized as local business, until after the services had all been rendered by it.

THIRTEENTH POINT.

PROPERTY PURCHASED IN ONE STATE FOR SHIPMENT TO ANOTHER.

In 1896 about 1,000,000 head of stock were purchased at these yards for shipment to other States. Upon the receipt by the Stock Yards Company from the purchaser of an order to deliver the stock purchased to a railroad company for shipment, under its contract with the railroad companies, the Stock Yards Company takes such stock from the pens where it is awaiting disposition, drives it to the nearest approach to its viaduct system, which begins on a point in the State of Kansas near the southwest corner of the north yards, and thence continues, with various angles and branches, in a general southerly direction about 3,500 feet (one branch connecting with the Kansas river bridge) to a point where it turns east about 500 feet, crossing the Kansas-Missouri State line; thence south about 400 feet to a group of pens located within the State of Missouri, known as the shipping division. There the live stock is assembled for shipment, and as rapidly as a train is made up under the supervision of the yardmaster or the Stock Yards Company the cars laden with stock are removed by the railroad company's engines and switching-crews to some point in the State of Missouri where the tracks of the Stock Yards Company intersect with the tracks of the railroad company, and thence such cattle pro-

ceed on their journey to other States. (Findings Nos. 29, 28, 22, R. 66, 67, 68.)

As shown by the testimony, the recognized practice at the stock yards for many years has been that the Stock Yards Company becomes liable to the railroad company as its agent for the care of this stock from the time it receives the shipping order until the stock has been placed in the car standing on the track of the Stock Yards Company adjacent to the shipping division. (R. 248-249.)

The question now arises whether the railroad tracks, loading-chutes, alleys, bridge, viaducts and tunnels operated and maintained by the defendant company are not "instrumentalities of the shipment of property from one State to another." In the interstate commerce act, it will be remembered, Congress uses the following language: "The term 'railroad' as used in this act shall include all bridges and ferries used or operated in connection with any railroad. . . . Also all the roads in use by any corporation operating a railroad, whether owned or operated under contract, agreement or lease; and the term 'transportation' shall include all instrumentalities of shipment or carriage."

Unless it appears that these appliances are not instrumentalities of shipment, it is quite clear that they are embraced within the regulation enacted by Congress, and are also within the language used in the next paragraph of the same section of the same act, viz.:

"All charges made for any service rendered . . . in

connection therewith, or for the receiving, delivering, storage or handling of such property, shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful."

It cannot be denied that in this act Congress was legislating upon the subject of charges made for services rendered in connection with the transportation of property from one State to another; nor can it be denied that, so far as the defendant Stock Yards Company is concerned, the State of Kansas has legislated upon precisely the same subject. If the act of March 3, 1897, contained a proviso that the act should not be so construed as to apply to "charges made for any service rendered or to be rendered in the transportation of property from one State to another, or in connection therewith, or for receiving, delivering, storage or handling of live stock in the course of transportation from one State to another," there would be very little of the business at the stock yards to which this act could possibly apply.

Walker v. Keenan, 73 Fed. Rep. 755.
The Daniel Ball, 10 Wall., *supra.*
Norfolk & West R. R. Co. v. Penna., 136 U. S. 114.
Gulf C. & G. Ry. Co. v. Helfley, 158 U. S. 98.

FOURTEENTH POINT.

"THE AUTHORITY OF THE STATE, SO FREQUENTLY RECOGNIZED BY THIS COURT, TO FIX TOLLS FOR THE USE OF WHARVES, PIERS, ELEVATORS, AND IMPROVED CHANNELS OF NAVIGATION, HAS ALWAYS BEEN LIMITED TO SUCH AS WERE EXCLUSIVELY WITHIN THE TERRITORY OF A SINGLE STATE, THUS AFFECTING INTERSTATE COMMERCE BUT INCIDENTALLY, AND CANNOT BE EXTENDED TO STRUCTURES CONNECTING TWO STATES WITHOUT INVOLVING A LIABILITY OF CONTROVERSIES OF A SERIOUS NATURE."

(154 U. S. 204-223.)

The Master made the following findings:

XXVIII.

"The tracks of eleven separate railway companies connect at the yards with those of the Stock Yards Company. Said yards have about fifteen miles of alleys, two tunnels for stock, one and a half miles of stock viaducts, a large bridge spanning the Kansas river, some of which are used daily by the owners and shippers of live stock, commission-men, buyers, and forwarding merchants, their agents, servants and other persons engaged in traffic in live stock, in going from one of these States to the other, and in transporting, moving and driving the same from Missouri to Kansas, and from Kansas to Missouri, to be weighed for sale, shipment to some other State, and for slaughter. The several packing establishments mentioned in finding No. 5 are located in the vicinity of and communicate with the stock yards by means of driveways, alleys and viaducts. In 1896 one large packing-house in Missouri purchased at the yards for slaughter, 35,511 cattle, 309,613 hogs, and 15,295 sheep; and agents of corporations and persons, citizens of other States than Kansas and Missouri, purchased for shipment to

such persons and corporations beyond the boundaries of Kansas and Missouri, 386,432 cattle, 333,818 hogs, and 204,388 sheep. (R. 67-68.)

XXIX.

"There is located within the State of Missouri, situated just south of the Exchange building, a group of cattle-pens known as the 'shipping division,' which adjoins and communicates with the railroad tracks owned by the Stock Yards Company, and used particularly in the preparation for shipment of cattle purchased in the main yards of the company. This group of pens is connected by means of alleys with the viaduct system of the stock yards, and is designed for and daily used in the movement of cattle purchased in Kansas and Missouri for shipment largely to other States. After cattle are sold in the main yards, whether in Kansas or Missouri, for shipment, they are usually driven to the nearest approach to the viaduct system, then over the viaducts (which are overhead driveways), which begin at a point in the State of Kansas near the southwest corner of the north yards, and from thence continue with various angles and branches in a general southerly direction about 2,500 feet (one branch connected with the Kansas river bridge) to a point where it turns east about 500 feet, crossing the State line, thence south about 400 feet to the shipping division. From this shipping division the cattle are loaded upon the cars belonging to the different railroad companies, standing upon the Stock Yards Company's tracks, to be transported to other points. In 1896, and during each of several years prior thereto, several hundred thousand head of cattle were thus disposed of." (R. 68.)

XXX.

"In 1896 there were received at the stock yards about 100,000 head of live stock, consigned by the shipper, to be transported by the railroads connected with the tracks of the Stock Yards Company, to points in States other than Kansas or Missouri. All of said live stock was unloaded by the defendant company, cared for, rested, watered and fed, and when

necessary moved by it over, along and upon its alleys, viaducts, tunnels and bridge, to the outgoing railroad named in the bill of lading accompanying said stock, to be transported to the point of final destination. All of the expenses connected with the caring for, feeding and watering, of such live stock was paid to the Stock Yards Company by the railroad companies, and by them ultimately collected from the consignee." (R. 68-69.)

The defendant company, out of the charges attempted to be regulated by this act, maintains a system of stock yards in two States, across and through which the entire commerce in live stock from thirty-four States ebbs and flows. The plant or system of yards operated by the defendant company is situated on both sides of the Missouri and Kansas State line. (Finding No. 28, R. 68-69.)

Native cattle enter the yards over the company's tracks and are unloaded at the chutes in Kansas, from which they are driven by the company's employés to the pens. *The important fact to be noted in this connection is, that they are driven, some to pens in Kansas and the rest to pens in Missouri, as directed by the owner or his agent, and not with regard to the convenience of the company; and are exposed for sale and sold as they are thus yarded under his direction.* Speaking generally, about one-third in number are thus yarded in Kansas and two-thirds in Missouri. Testimony was taken of the disposition of the cattle in this respect received in one day, which showed by actual count that on that day 5,186 head originating in Kansas were received, and 2,413 were yarded in Missouri and 1,772

were yarded in Kansas. *It results that on that day 3,413 head originating in Kansas were by express direction of their owners driven, from the place of unloading from the cars in Kansas over the company's alleys and viaducts, to their pens in Missouri, and there sold. In this movement of the cattle the owner used the appliances of the company for the purpose of driving his stock from Kansas to Missouri, and no other facilities could be availed of by him at that place for that purpose.*

Having regard to the fact, first, that the appliances of the stock yards under the circumstances are indispensably necessary, and are employed in the transportation of the stock from Kansas to Missouri, so that the company directly participates in that transaction, and, secondly, to the further fact that Kansas cattle are thus transported by express direction of their owners to Missouri, where they are sold, making use of the company's roads, etc., for the purpose, the circumstance that the company has other yards in Kansas is immaterial and irrelevant. *The business is interstate, and under the protection of the Constitution, by reason of the cattle being driven by their owners from one State to another; and as the company contributes to such transportation it also is engaged in interstate commerce. Nor is it of consequence that the distance from the State line to the pens in Missouri is inconsiderable.* As Mr. Justice Brown says in the Covington Bridge case: "If interstate commerce means simply commerce between the States, it must apply to all commerce which crosses the State line, regardless of the distance from which it comes or to which it is

bound before or after it crosses such State line." The case therefore is that of a structure, consisting of the company's ways, alleys and viaducts, extending from one State to another, used for transportation of stock originating in one and seeking a market in the other. This is the Covington Bridge case in all its circumstances. (154 U. S. 204.)

In 1890 the Legislature of Kentucky passed an act by which it attempted to regulate the rates which the Covington & Cincinnati Bridge Company should charge persons using their bridge, extending from the city of Covington in Kentucky to the city of Cincinnati in Ohio. The act prescribed rates for persons, and also rates for property which might go or be taken across the bridge from one State to another. The bridge company failing to comply with the provisions of the act, an indictment was filed, the bridge company demurred thereto, and the law having been upheld by Kentucky, the controversy was taken by writ or error to this court. On the part of the bridge company it was contended that the bridge being an instrumentality of interstate commerce, lying partly in two States, it was beyond the power of the State of Kentucky to regulate its charges. On the part of the State it was contended that the business or employment of the bridge was not commerce, and that the act of the State of Kentucky was not a regulation of commerce; that the act was a mere regulation of charges for the use of artificial facilities, consisting of mere local aids to commerce, and affecting commerce only incidentally; that such facilities did not require nor admit of uniformity of regulation;

and that Congress not having legislated on the subject, it was competent for the State to do so. Counsel for the State relied upon *Munn v. Illinois, Budd v. New York, Brass v. North Dakota,* together with other similar decisions.

The decision of the Supreme Court was delivered by Mr. Justice Brown. Before discussing the facts in the particular case before it, the court said:

"The adjudications of this court with respect to the power of the States over the general subject of commerce, are divisible into three classes: first, those in which the power of the State is exclusive; second, those in which the States may act in the absence of legislation by Congress; third, those in which the action of Congress is exclusive, and the States cannot interfere at all." (154 U. S. 204.)

Thereupon the court reviewed all of the leading cases upon this subject; among others, *Munn v. Illinois, Budd v. New York, Brass v. North Dakota;* and on page 216 of the opinion exhaustively reviewed the case of *Wabash Railway Company v. Illinois,* 118 U. S. 557. On page 217 the court says:

"The real question involved here is whether this case can be distinguished from the Wabash case. That involved the right of a single State to fix the charge for transportation from the interior of such State to places in other States. This case involves the right of one State to fix charges for the transportation of persons and property over a bridge connecting it with another State, without the assent of Congress or such other State, and thus involving the further inquiries: First, whether such traffic across the river is interstate commerce; and, second, whether a bridge can be considered an instrument of such commerce."

The court further say (page 218):

"An attempt is made to distinguish a bridge from a ferry-

boat, and to argue that while the latter is an instrument of interstate commerce, the former is not. Both are, however, vehicles of such commerce, and the fact that one is movable and the other is a fixture makes no difference in the application of the rule. . . . While the bridge company is not itself a common carrier, it affords a highway for such carriage, and a toll upon a bridge is as much a tax upon commerce as a toll upon a turnpike is a tax upon the traffic of such turnpike, or the charges upon a ferry a tax upon commerce across a river."

The learned judge concludes his opinion by a quotation from that of Mr. Justice MILLER in the Wabash case, as follows:

"It is impossible to see any distinction in its effects upon commerce of either class, between a statute which regulates charges for transportation and a statute which levies a tax for the benefit of the State upon the same transportation."

The court reached the result that the act of Kentucky amounted to a regulation of interstate commerce, and was therefore void.

It seems to us that the court in this case must also reach the result that the act of Kansas complained of amounts to a regulation of interstate commerce.

As we have seen from the case of *La Loup v. Mobile, supra,* an act of an individual State which amounts to a regulation of interstate commerce cannot be upheld upon the ground that some of the commerce carried on by the person or corporation whose business is regulated is domestic or internal. Therefore, if any part of the business transacted at the stock yards is interstate commerce within the meaning of the Federal Constitution, the statute of 1897 must be declared void.

FIFTEENTH POINT.

THE PROPERTY OF THE KANSAS CITY STOCK YARDS COMPANY, PARTICULARLY THE STRUCTURE CONNECTING THE STATES OF KANSAS AND MISSOURI, USED BY SHIPPERS FOR DRIVING AND TRANSPORTING THEIR LIVE STOCK, (THE TOLL OR COMPENSATION FOR WHICH IS INCLUDED IN THE CHARGE FOR YARDAGE,) IS AN INSTRUMENT OF INTERSTATE COMMERCE.

THAYER, J., in his opinion handed down at the time the final decree was rendered, attempts to meet the conclusion inevitable from our explanation of the different classes of the company's business, by saying that the effect of the act of March 3, 1897, "on interstate traffic is purely incidental, and to the extent that it prevents excessive charges for yarding and feeding cattle in course of transit, it tends to facilitate rather than to hinder such traffic."

If that argument is good in this case, then it is equally good in the case of the *Covington Bridge Company v. Kentucky, supra*, where the Kentucky law of 1890, fixing rates over the bridge of the Covington & Cincinnati Bridge Company, spanning the Ohio river, and connecting the States of Ohio and Kentucky, "reduced the rates of toll so that the net profits of the bridge should not exceed 15 per cent. per annum, after the proper deductions were made for repairs and charges of other descriptions." It might as well have been said in the opinion handed down in that case, as in this case, that the Kentucky law

of 1890 "prevents excessive charges, . . . and tends to facilitate rather than to hinder interstate traffic."

If the cheapening of rates on interstate traffic must be considered in such a case as this, as tending to facilitate, rather than to hinder such traffic, then the cheaper the rates the better, and the constitutional provisions for the protection of property must be wholly ignored.

Again, if it is fair argument to insist that the extensive viaducts and structures of the Stock Yards Company, extending from a point in Kansas to a point in Missouri, are merely aids or incidents to commerce, why should it not be insisted that the bridge spanning the Ohio river, and connecting the States of Ohio and Kentucky is a mere aid or incident to commerce? In the one case, the structure connects the State of Kansas with the State of Missouri. In the other case, the structure connects the State of Ohio with the State of Kentucky. If the Kentucky law, fixing the rates over the structure connecting the States of Ohio and Kentucky, was an attempted regulation of commerce which it was not within the power of Kentucky to make, then we earnestly insist that the Kansas law of 1897 fixing a rate for yardage (which includes driving stock by the shipper over the structure connecting Kansas and Missouri) is also an attempted regulation of commerce which it is not within the power of Kansas to make. Therefore, we repeat what was said in the Covington Bridge Company case:

"The authority of the State, so frequently recognized by this court, to fix tolls for the use of wharves, piers, elevators and im-

proved channels of navigation, has always been limited to such as were exclusively within the territory of a single State, thus affecting interstate commerce but incidentally, and cannot be extended to structures connecting two States, without involving a liability to controversies of a serious nature." (154 U. S. 204-224.)

In the opinion of THAYER, J., it is said:

"This shifting of live stock from one side of the State line to the other, and for its own convenience, is not interstate commerce, within the proper meaning of that phrase."

This statement evades the point in dispute. We are not contending that if the Stock Yards Company, for its own convenience, shifted live stock from one side of the State line to the other within its own yards, that thereby interstate commerce is involved. The testimony is that the structures referred to are used and traveled upon by the owners and shippers of cattle in driving their live stock from one State to the other, in the same way as the bridge of the Covington & Cincinnati Company, spanning the Ohio river and connecting the States of Ohio and Kentucky, is used for persons, live stock, &c. The Master reports:

"Said yards have about fifteen miles of alleys, two tunnels for stock, one and a half miles of stock viaducts, a large bridge spanning the Kansas river, some of which are used daily by the owners and shippers of live stock, commission-men, buyers, and forwarding merchants, their agents, servants and other persons engaged in traffic in live stock in going from one of these States to the other, and in transporting, moving and driving the same from Missouri to Kansas, and from Kansas to

Missouri, to be weighed for sale, shipment to some other State, and for slaughter." (Finding No. 38 of Master, R. 67-68.)

The case of *Missouri, K. & T. R. Co. v. Haber*, 169 U. S. 613, does not conflict with our contention. In that case, it was decided that "the power of the States to protect their domestic cattle from contagious diseases was left untouched and unimpaired by the act of Congress of March 29th, 1884." And it was further decided that "the Kansas statute of 1885, as amended in 1891, for the protection of domestic animals from contagious diseases, is not inconsistent with the said act of Congress for the suppression and extinction of contagious diseases of cattle." Mr. Justice HARLAN observed:

"It is therefore a mistake to say that the Kansas statute, so far as it gives a right of action for injuries arising from diseases communicated to domestic cattle by cattle of a particular kind brought into the State, comes into conflict with any regulation established under the authority of Congress to prevent the spread of contagious diseases from one State to another."

But it clearly appears in that case that where *"the National Government, acting within the limits of its constitutional authority, takes under its immediate control and exclusive supervision the entire subject to which the State legislation may refer," the State has no power to interfere.* Under the acts of Congress referred to, and the regulations prescribed by the Department of Agriculture, Congress has not only legislated regarding the live stock yarded in the quarantine division of the yards, *but the National Government, "acting within the limits of its constitutional authority, has taken under its imme-*

diate control and exclusive supervision" such live stock. It has imposed duties and burdens upon the Stock Yards Company concerning these cattle which must be complied with, and therefore if the State may limit the charges for yardage in the quarantine division, it may thereby directly prevent the company from obeying the acts of Congress and the regulations of the Department of Agriculture made in pursuance thereof. If the State of Kansas has power to regulate the charges for yardage in the quarantine division, it might produce a conflict between the two governments in the exercise of their respective powers. The National Government compelling duties and burdens upon the company requiring services and expenditures, and the State Government prohibiting the company from making "but one yardage charge," and fixing the rate thereof. The Stock Yards Company "cannot serve two masters," in yarding the quarantine cattle and giving proper attention thereto. As the acts of Congress and the regulations of the Department of Agriculture are paramount to any regulation or order of the State of Kansas concerning the yardage of such cattle, the act of March 3d, 1897, is a nullity.

(See act of Congress of May 29th, 1884, 23 Stat. at L. 31, chap. 60; the act of March 3d, 1891, 26 Stat. at L. 1044-1049, chap. 544, appropriating money to carry out the provisions of that act; and § 5258 of the Revised Statutes, relating to the transportation of passengers, freight, property, &c.)

The Kansas statute of 1897 restricting the charges of the Stock Yards Company is not a quarantine law,—not an inspec-

tion law. It is a statute prescribing a rate of toll or compensation applicable not only to the quarantine division of the company, but also to the structure of the company connecting Kansas and Missouri, and thereby applicable to persons crossing from Kansas to Missouri and from Missouri to Kansas, a right which practically defeats the power of the National Government to exercise exclusive control over the live stock in the quarantine division, and also practically prevents the corresponding right of Missouri to fix tolls from her own State.

Neither do the recent cases decided by this court of *Anderson v. United States*, 171 U. S. 604, and *Hopkins v. United States*, 171 U. S. 578, conflict with our claim of interstate commerce in the driving of the live stock and the travel of their owners, their agents and employés, over the structure of the Stock Yards Company connecting Kansas and Missouri.

In the Anderson case, it was said:

"In the view we take of this case, we are not called upon to decide whether the defendants are or are not engaged in interstate commerce, because if it be conceded that they are so engaged, the agreement as evidenced by the by-laws, is not one in restraint of that trade, nor is there any combination to monopolize or attempt to monopolize such trade within the meaning of the act."

In the Hopkins case, it was decided that—

"The business of buying and selling live stock at stock yards in a city by members of a stock exchange as commission merchants is not interstate commerce."

And that—

"The fact that a State line runs through the stock yards, and

that sales may be made of a lot of stock in the yards which may be partly in one State and partly in another, has no effect to make the business of selling stock interstate commerce."

In that case, neither the Kansas City Live Stock Exchange nor the members thereof owned or operated any bridge or other structure connecting the States of Kansas and Missouri, or connecting any other States. The defendants in that case " were only commission merchants, who sold cattle upon commission as compensation for their services." That and nothing more. They derived no toll, compensation or charge from the operation of any bridge, viaduct or other structure in Kansas or Missouri. The fact " that the State line runs through the stock yards where they sold stock, and that the sales they made were partly in one State and partly in another, was not of the slightest materiality " to them in the transaction of their business.

The case of *Hopkins v. United States, supra,* has no more application to this case than it has to the Covington & Cincinnati Bridge Company case commented upon. But the decision in the last case, so far as the structures of the Stock Yards Company are used under the orders and directions of shippers of live stock and their agents and employés, is applicable to this case. The charges by the Stock Yards Company for the toll or use of the structures owned and operated by it, connecting Kansas with Missouri, are included in the charges and compensation received by the company for yardage. The act of March 3d, 1897, complained of, " is an attempted regulation of commerce, which it is not within the power of Kansas to make,"

as to the structures connecting the States of Kansas and Missouri.

The contention made by the Attorney-General that neither the Stock Yards Company, nor any of its viaducts, bridges or structures connecting the States of Kansas and Missouri, are instruments of interstate commerce or vehicles of such commerce, and therefore that neither the Stock Yards Company, nor any of its business comes within the commerce clause of the Constitution of the United States, is not supported, in our view, by the authorities.

There is a great variety of transactions which are protected by the commerce clause, in which parties did not even so much as contract for carriage. This will clearly appear from an examination of the cases, only a few of which can be mentioned here.

In *Brown v. Maryland, supra,* the State statute complained of imposed a tax on the occupation of importing property. No question of transportation was involved at all. In *McCall v. California, supra,* the railroad agent in San Francisco was engaged in soliciting passengers from that city to New York to use the roads represented by him from Chicago east. It is expressly stated that he did not sell tickets over his roads, nor receive any money on account thereof.

Leisy v. Hardin, supra.
Scott v. Donald, supra.

Welton v. Missouri, supra, was the case of a salesman solicit-

ing orders for sewing-machines upon his principals resident out of the State.

Robbins v. Shelby Co., 120 U. S. 489, was to precisely the same point.

Enough has been shown to justify the statement by us that not only is transportation not a necessary element in cases arising under the commerce clauses, but that any transaction in the course of the prosecution of interstate commerce is within the protection of that clause.

There is also a great variety of cases in which the property affected or the transaction involved is said to be an aid or instrument of commerce, and therefore within the local jurisdiction unless Congress has acted in respect of them. These cases may be sufficient for our present purpose, classified as follows:

1. One class of cases arises under State statutes imposing taxes upon property used in the transaction of interstate commerce. All the cases admit the power of the States to tax property within their jurisdiction. This power, even though the result of its exercise incidentally burdens or affects interstate commerce, does not conflict with the power of Congress. In *Gibbons v. Ogden, supra*, it is said:

"In imposing taxes for State property they [the States] are not doing what Congress is empowered to do. Congress is not empowered to tax for those purposes which are within the exclusive province of the States. When, then, each government exercises the power of taxation, neither is exercising the power of the other. But, when a State proceeds to regulate commerce among the several States, it is exercising the very power that is granted to Congress, and is doing the very thing Congress

is authorized to do. There is no analogy, then, between the power of taxation and the power of regulating commerce."

In *Adams Express Co. v. Ohio, supra,* it is said (page 218):

"Again and again has this court affirmed the proposition that no State can interfere with interstate commerce through the imposition of a tax, by whatever name called, which is in effect a tax for the privilege of transacting such commerce. And it has as often affirmed that such restriction upon the power of a State to interfere with interstate commerce does not in the least degree abridge the right of a State to tax at their full value all the instrumentalities used for such commerce."

This question has been a great many times before this court, and invariably the ruling has been that unless the taxing statute amounts to a regulation of the commerce it affects, it is not repugnant to the commerce clause of the Constitution. It is obvious, therefore, that the numerous decisions which hold that taxing laws of the States, which only incidentally interfere with interstate commerce and are not regulations of such commerce at all, have no application to a case where the act is in terms a regulation of the commerce which it affects.

This distinction is pointed out with unusual clearness in the case of *Henderson Bridge Co. v. Kentucky,* 166 U. S. 110, where it is said:

"The company was chartered by the State of Kentucky to build and operate a bridge, and the State could properly include the franchises it had granted in the valuation of the company's property for taxation. (*Central Pacific Railroad v. California,* 162 U. S. 91.) The regulation of tolls for transportation over the bridge considered in *Covington & Cincinnati Bridge Co. v.*

Kentucky, 154 U. S. 204, presented an entirely different question.

"Clearly, the tax was not a tax on the interstate business carried on over or by means of the bridge, because the bridge company did not transact such business. That business was carried on by the persons and corporations which paid the bridge company tolls for the privilege of using the bridge. The fact that the tax in question was to some extent affected by the amount of the tolls received, and therefore might be supposed to increase the rate of tolls, is too remote and incidental to make it a tax on the business transacted. This very question was decided in *Erie Railroad v. Pennsylvania*, 158 U. S. 431, 439, where it was said: 'It is argued that the imposition of a tax on tolls might lead to increasing them in an effort to throw their burthen on the carrying company. Such a result is merely conjectural, and, at all events, too remote and indirect to be an interference with interstate commerce. The interference with the commercial power must be direct, and not the mere incidental effect of the requirement of the usual proportional contribution to public maintenance.'"

The distinction between the tax cases and the class of cases to which, we insist, the case at bar belongs, is, that in all of the tax cases the tax affects interstate commerce incidentally or remotely, and does not amount to a regulation of interstate commerce; whereas, the statutes attempting to regulate the contractural burdens, such as bridge tolls, railroad rates, etc., amount to a direct definite attempt to regulate the commerce carried on over such bridges or railroads.

2. The other class of cases is that of wharves.

In all of these cases the controversy arose over the right of a municipality which owned the wharf to charge vessels engaged

in the interstate carrying trade reasonable sums for their use, or over the validity of a municipal regulation of the charges where an individual owned such convenience. In every case the right to charge such vessels a reasonable compensation for the use of such instrumentalities was upheld. The interstate carriers could not complain of the requirement that they should pay a reasonable sum for the use of the facility. The municipality owning such wharf stood in no different situation from an individual owner charging reasonable compensation for the use of his property; and in the case of the individual owner, the city simply limited his charges for the use of his property. It is expressly denied in all of these cases that a reasonable charge for the use of property amounts to a regulation of interstate commerce.

This is illustrated by what is said in *Gibbons v. Ogden, supra.* The Chief Justice says:

"A State, it is said, or even a private citizen, may construct lighthouses. But gentlemen must be aware, that if this proves a power in a State to regulate commerce, it proves that the same power is in the citizen. States or individuals who own lands, may, if not forbidden by law, erect on those lands what buildings they please; but this power is entirely distinct from that of regulating commerce."

In the wharfage cases, it is not asserted that the States possess the power to prescribe rules by which interstate commerce shall be governed; and obviously they have no application to a case where, as here, the State asserts the power to declare what price persons engaged in interstate trade shall pay for the privilege

of exposing for sale their property imported into the State and while it is still segregated from the common mass of property in such State.

As we have seen, an act which attempted to regulate tolls charged by a bridge company for the use of its property by persons engaged in interstate commerce was condemned as a regulation of that commerce. This case does not assert that the commerce clause abridges the right of a State to receive reasonable compensation from persons engaged in interstate commerce, for the use of structures erected by the State or municipality, but it does assert that no State has the power to prescribe the conditions upon which persons engaged in interstate trade shall use the property of another, to carry on their business, because the power to prescribe the rules by which interstate commerce should be governed does not reside in the States, but is placed elsewhere. A State might construct and maintain a railroad used by persons engaged in interstate traffic, and its right to regulate the charges for transportation could not be questioned; but the admission of this right does not admit the right of such State to regulate rates charged by other roads for such traffic. Thus it clearly appears that the wharfage cases are referable to another principle from that necessarily involved in the determination of the case at bar.

3. A third class is the elevator cases, in none of which the element of interstate commerce was involved.

In Munn's case, grain stored in the elevator was received,

part of it from Illinois and part of it from other States, and was, without reference to its origin, all commingled so that the owner of any particular assignment could not draw the identical grain stored for him, but only an equal amount taken from the whole mass. It did not appear that any of the grain stored in the elevator was to be forwarded *in specie*, to another State.

Upon this state of facts, no question could properly arise under the commerce clause of the Constitution. Notwithstanding these facts, Mr. Chief Justice WAITE, speaking for the majority of the judges in that case, said, on page 135:

"The warehouses of these plaintiffs in error are situated and their business carried on exclusively within the limits of the State of Illinois. They are used as instruments by those engaged in interstate commerce, but they are no more necessarily a part of commerce itself, than the dray or the cart by which, but for them, grain would be transferred from one railroad station to another. Incidentally, they may become connected with interstate commerce, but not necessarily so; their regulation is a thing of domestic concern; and certainly until Congress acts in reference to their interstate relations, the State may exercise all the powers of government over them, even though in doing so it may indirectly operate upon commerce outside its immediate jurisdiction."

The authority of this case as an exposition of the views of the Supreme Court in respect of the commerce clause has been completely overthrown.

In *Wabash Ry. Co. v. Illinois, supra,* Mr. Justice MILLER felt himself constrained to explain the circumstances of that decision for the purpose of overthrowing its authority on this question. He said:

"Of the members of the court who concurred in those opinions, there being two dissentients, but three remain, and the writer of this opinion is one of the three. He is prepared to take his share of the responsibility for the language used in those opinions, including the extracts above presented. He does not feel called upon to say whether those extracts justify the decision of the Illinois court in the present case. It will be seen, from the opinions themselves and from the arguments of counsel presented in the reports, that the question did not receive any very elaborate consideration ,either in the opinions of the court or in the arguments of counsel. And the question how far a charge made for a continuous transportation over several States, which included a State whose laws were in question, may be divided into separate charges for each State, in enforcing the powers of the State to regulate the fares of its railroads, was evidently not fully considered. These three cases, with others concerning the same subject, were argued at the same time by able counsel, and in relation to the different laws affecting the subject, of the States of Illinois, Iowa, Wisconsin and Minnesota; the main question in all the cases being the right of the State to establish any limitation upon the power of the railroad companies to fix the price at which they would carry passengers and freight. It was strenuously denied, and very confidently, by all the railroad companies, that any legislative body whatever had a right to limit the tolls and charges to be made by the carrying companies for transportation. And the great question to be decided, and which was decided, and which was argued in all those cases, was the right of the State within which a railroad company did business to regulate or limit the amount of any of these traffic charges.

"The importance of that question overshadowed all others; and the case of *Munn v. Illinois* was selected by the court as the most appropriate one in which to give its opinion on that subject, because that case presented the question of a private citizen, or unincorporated partnership, engaged in the ware-

housing business in Chicago, free from any claim of right or contract under an act of incorporation of any State whatever, and free from the question of continuous transportation through several States. And in that case the court was presented with the question, which it decided, whether anyone engaged in a public business, in which all the public had a right to require his service, could be regulated by acts of the Legislature in the exercise of this public function and public duty, so far as to limit the amount of charges that should be made for such services.

"The railroad companies set up another defense, apart from denying the general right of the Legislature to regulate transportation charges, namely, that in their charters from the States they each had a contract, express or implied, that they might regulate and establish their own fares and rates of transportation. These two questions were of primary importance; and though it is true that as incidental or auxiliary to these, the question of the exclusive right of Congress to make such regulations of charges as any legislative power had the right to make, to the exclusion of the States was presented, it received but little attention at the hands of the court, and was passed over with the remarks in the opinion of the court which have been cited. . . .

"We must, therefore, hold that it is not, and never has been, the deliberate opinion of a majority of this court that a statute of a State which attempts to regulate the fares and charges by railroad companies within its limits, for a transportation which constitutes a part of commerce among the States, is a valid law."

In *Covington Bridge Co. v. Kentucky, supra,* Mr. Justice Brown, speaking for the court, entered upon an elaborate examination and analysis of the cases, and cited Munn's case, and that of *Budd v. New York, supra,* and *Brass v. N. Dakota,* 153 U. S. 391, and concluded by saying (p. 217) that neither in Munn's case, nor in "the subsequent cases, has any

disposition been shown to limit or qualify the doctrine laid down in the Wabash case, and to that doctrine we shall adhere."

If there are other classes of cases upon the authority of which it is pretended that instrumentalities of interstate commerce, such as these yards, are mere aids to such commerce, and the services rendered by them are only remotely incident thereto, they may all be explained in much the same way as the three classes above examined.

Upon the testimony, authorities, and the argument presented upon the part of the appellants, it is confidently submitted that a dispassionate consideration of this record will induce the conclusion that the appellants are not without a remedy. We believe that the rights which the Constitution of the United States guarantees to every citizen will be observed, and that the Attorney-General of the State of Kansas will be enjoined from enforcing the provisions of the act of March 3d, 1897, against the Stock Yards Company, its officers, agents and employés. The appellants therefore pray that the final decree appealed from may be reversed and that the relief asked for by them be granted.

Respectfully submitted.

B. P. WAGGENER AND
ALBERT H. HORTON,
Of Counsel for Appellants.

TOPEKA, KANSAS, October 2, 1899.

APPENDIX.

EXHIBIT "A."

COMMITTEE SUBSTITUTE FOR HOUSE BILL No. 87.

AN ACT defining what shall constitute public stock yards, defining the duties of the person or persons operating the same, and regulating all charges thereof, and removing restrictions in the trade of dead animals, and prescribing penalties for violations of this act.

Be it enacted by the Legislature of the State of Kansas:

SECTION 1. Any stock yards within this State, into which live stock is received for the purpose of exposing or having the same exposed for sale or feeding, and doing business for a compensation, and which for the preceding twelve months shall have had an average daily receipt of not less than one hundred head of cattle, or three hundred head of hogs, or three hundred head of sheep, are hereby declared to be public stock yards.

SEC. 2. Any person, company or corporation owning or operating such public stock yard or stock yards in this State, is hereby declared to be a public stock yards operator, whether living or being in this State or not.

SEC. 3. Every such public stock yards operator or operators shall annually, on the 31st day of December of each year, file with the Secretary of State an itemized statement certified and sworn to, setting forth the number of head of cattle, calves, hogs, horses and mules received in his or their public stock yards during the year next preceding.

SEC. 4. It shall be unlawful for the owners, proprietors, or the employés of the owners or proprietors of any such public stock yards within this State, to charge for driving, yarding, watering and weighing of stock, greater prices than the following: For driving, yarding, watering and weighing of cattle,

15 cents per head; calves, 8 cents per head; hogs, 6 cents per head; sheep, 4 cents per head; and there shall be but one yardage charged.

SEC. 5. It shall be unlawful for the owner, owners, or proprietors, or their employés, of any such stock yards in this State, to sell and deliver at the rate of less than two thousand pounds for a ton of hay, or any part thereof, the same to be of good quality, or to charge for or to sell the same at more than one hundred per cent. above the average market price, or value of such hay upon the markets of the towns or cities wherein such stock yards are located, upon the day preceding such sale and delivery; and it shall also be unlawful for any such owners, or proprietors, or employés, to sell and deliver less than seventy pounds of corn in the ear for a bushel, or less than fifty-six pounds of shelled corn for a bushel, or to charge for or to sell the same at more than one hundred per cent. above the average market price or value of such ear corn or shelled corn on the market of the towns or cities wherein said stock yards are located, on the day next preceding such sale and delivery. All feed not above named shall be sold for no greater per cent. or profit than hereinbefore provided.

SEC. 6. It shall be unlawful for the owners or proprietors of any stock yards to prohibit the owner or owners, or the representatives of any owner or owners of any dead stock in such yard or yards, from selling such dead stock to any person or persons.

SEC. 7. That any person or persons violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined for the first offense not more than one hundred dollars; for the second offense not less than one hundred dollars nor more than two hundred dollars; and for the third offense not less than two hundred dollars nor more than five hundred dollars, and by imprisonment in the county jail not exceeding six months for each offense; and for each subsequent offense he or they shall be fined in any sum not

less than one thousand dollars, and by imprisonment in the county jail not less than six months.

SEC. 8. It is hereby made the duty of the Attorney-General to prosecute all violations of the provisions of this act.

SEC. 9. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

SEC. 10. This act shall take effect and be in force from and after its publication in the official State paper.

I hereby certify that the above bill originated in the House, and passed that body March 1, 1897.

W. D. STREET,
Speaker of the House.

A. D. GILPIN,
Chief Clerk of the House.

Passed the Senate March 2, 1897.

A. M. HARVEY,
President of the Senate.

M. WATSON,
Secretary of the Senate.

Approved March 3, 1897.

J. W. LEEDY, *Governor.*

(R. 18-20, 41-42, *1764.*)

EXHIBIT "B."

STATE OF KANSAS, WYANDOTTE COUNTY, ss.

We, the undersigned,

C. F. Morse, of Kansas City, Missouri;
Wallace Pratt, of Kansas City, Missouri;
John D. Cruise, of Wyandotte, Kansas;
David E. Jones, of Rosedale, Kansas;
Morris E. Jones, of Wyandotte, Kansas,

under and in pursuance of the laws of the State of Kansas do hereby associate ourselves together and form a body politic and corporate, and do certify,

FIRST: The name of said corporation is

"KANSAS CITY STOCK YARDS COMPANY."

SECOND: The purposes for which said corporation is formed are the construction, maintenance and operation of Union Stock Yards, and of such buildings, hotels, railways and switches as may be necessary for that purpose.

THIRD: The places where the business of said corporation is to be transacted are in the county of Wyandotte and State of Kansas and in Jackson county in the State of Missouri.

FOURTH: The term for which said corporation shall exist is nine hundred and ninety-nine years.

FIFTH: The number of the directors of said corporation is nine, and the names and residences of those who are appointed for the first year are:

Charles Merriam, of Boston, Massachusetts;
H. H. Hunnewell, of Boston, Massachusetts;
Charles Francis Adams, jr., of Quincy, Massachusetts;
E. V. R. Thayer, of Boston, Massachusetts;
John A. Burnham, of Boston, Massachusetts;
S. B. Armour, of Kansas City, Missouri;
George Fowler, of Wyandotte, Kansas;
Charles W. Blair, of Leavenworth, Kansas;
V. J. Lane, of Wyandotte, Kansas.

SIXTH: The amount of the capital stock of said corporation is two million five hundred thousand dollars, and the number of shares into which it is divided is twenty-five thousand, of the par value of one hundred dollars each.

CHARLES F. MORSE.
MORRIS E. JONES.
J. D. CRUISE.
WALLACE PRATT.
DAVID E. JONES.

STATE OF MISSOURI, COUNTY OF JACKSON, ss.

On this 8th day of December, 1883, before the undersigned, a notary public within and for said county and State, personally appeared C. F. Morse, Wallace Pratt, John D. Cruise, David E. Jones, and Morris E. Jones, to me personally known to me to be the same persons whose names are subscribed to the foregoing instrument as parties thereto, and severally duly acknowledged that they executed the same for the purposes therein mentioned.

My commission as notary public will expire on the 12th day of September, 1886.

In witness whereof I have hereunto set my hand and affixed my official seal, the day and year first above written.

[SEAL.] J. P. DANA, *Notary Public.*

(R. *1870-1874.*)

EXHIBIT "C."

To the Honorable the Secretary of State of the State of Kansas:

We, the Board of Directors of the Kansas City Stock Yards Company, a corporation duly created and existing under and by virtue of the laws of the State of Kansas, and with an authorized capital of $2,500,000, do hereby certify that on the 6th day of June, 1887, in pursuance of a previous vote of a majority of the stockholders, we duly increased the capital stock of said company from two million five hundred thousand dollars ($2,500,000) to five million dollars ($5,000,000), in accordance with the provisions of Chapter 23 of the General Statutes of Kansas.

C. F. ADAMS.
H. H. HUNNEWELL.
V. THAYER.
[SEAL.] JOHN A. BURNHAM.
CHAS. MERRIAM.
V. J. LANE.
CHARLES W. BLAIR.
S. B. ARMOUR.
GEORGE FOWLER.

Attest: E. E. RICHARDSON, *Secretary.*

(R. *1870-1875.*)

EXHIBIT "D."

To the Honorable the Secretary of State of the State of Kansas:

We, the Board of Directors of the Kansas City Stock Yards Company, a corporation duly created and existing under and by virtue of the laws of the State of Kansas, and with an authorized capital of five million dollars ($5,000,000), do hereby certify that on the 7th day of February, 1894, we duly increased the capital stock of said company from five million dollars ($5,000,000) to seven million five hundred thousand dollars $7,500,000), in accordance with the provisions of Chapter 23 of the General Statutes of Kansas.

CHARLES F. ADAMS.
V. THAYER.
CHAS. MERRIAM.
[SEAL.] H. H. HUNNEWELL.
JOHN A. BURNHAM.
CHARLES W. BLAIR.
S. B. ARMOUR.
L. E. JAMES.
E. S. W. DROUGHT.

Attest: E. E. RICHARDSON, *Secretary.*

(R. *1870-1877.*)

EXHIBIT "E."

Extracts from the Senate Journal of the Legislature of the State of Kansas for 1897.

"FEBRUARY 9th, 1897.

CONSIDERATION OF MOTIONS AND RESOLUTIONS.

"Senate concurrent resolution No. 15 was read, and is as follows:

"*Whereas*, The Legislature of the State of Missouri has appointed a committee to confer with a similar one from the Legislature of Kansas, regarding the regulation and control of the stock yards located at Kansas City, Missouri, and Kansas City, Kansas; therefore, be it

"*Resolved by the Senate of the Legislature of Kansas, the House concurring therein*, That a committee consisting of five members, two from the Senate and three from the House, be appointed by the presiding officers of the respective bodies of the Legislature of Kansas, to meet and confer with the committee appointed by the Legislature of Missouri for the purpose above stated.

"The question being on the adoption of the resolution, a vote was taken and the resolution was adopted."

(Senate Journal of 1897, pages 394, 395.)

"FEBRUARY 10, 1897.

"The president announced as the committee on the part of the Senate, in accordance with Senate concurrent resolution No. 15, Messrs. Jumper and Morrow."

(Senate Journal of 1897, page 413.)

Extracts from the House Journal of the Legislature of the State of Kansas for 1897.

"FEBRUARY 10th, 1897.

"Message from the Legislature of the State of Missouri was read, and is as follows:

"HOUSE OF REPRESENTATIVES,

"JEFFERSON CITY, MO., February 5, 1897.

"Mr. Whitecotton offered the following resolution, which was read and adopted:

"*Whereas*, There appears to be a great demand by the farmers of the State for legislation regulating charges made by the stock yards of this State; and

"*Whereas*, The Legislature of Kansas has requested that this House appoint a committee to confer with a like committee appointed by the Legislature of Kansas to confer as to legislation affecting said charges; and

"*Whereas*, It is necessary that legislation on this subject be uniform in adjoining States:

"*Resolved*, That the speaker appoint a committee of the members of this House to correspond and confer with a like committee, if any, from each of the adjoining States, as to securing the necessary relief from any excessive charges and to secure uniform legislation on said subject, and to report back to this House the result of their investigation, with recommendations as to legislation as the committee may seem proper, at as early time as may be convenient.

"In compliance with the above resolution the speaker appointed the following committee: Messrs. Whitecotton, Macey, Aydelotte, Harrel, and Fitzgerald.

J. W. FARRIS, *Speaker*.

"Attest: R. P. THOMPSON, *Ass't Chief Clerk*.

"Mr. Harrel introduced the following resolution, which was read and adopted:

"*Whereas*, By resolution adopted by this House on the 5th day of February, 1897, a conference committee, composed of

five members, was appointed to confer with a like committee to be appointed by the Speaker of the House of Representatives at Topeka, Kansas, looking to the enactment of a uniform law relating to stock yard charges; therefore, be it

"*Resolved*, That the chief clerk of this House be instructed to forward a copy of said resolution to the Speaker of the House of Representatives, at Topeka, Kansas, with the request that a like committee be appointed by the Kansas House of Representatives, to the end that an early conference between the two houses may be obtained.

J. W. FARRIS, *Speaker.*

"Attest: R. P. THOMPSON, *Ass't Chief Clerk.*

"Senate concurrent resolution No. 14 was read, and is as follows:

"*Whereas*, The Legislature of the State of Missouri has appointed a committee to confer with a similar one from the Legislature of Kansas regarding the regulation and control of the stock yards located at Kansas City, Mo., and Kansas City, Kas.; therefore, be it

"*Resolved, by the Senate of the Legislature of Kansas, the House concurring therein*, That a committee consisting of five members, two from the Senate and three from the House, be appointed by the presiding officer of the respective bodies of the Legislature of Kansas to meet and confer with the committee appointed by the Legislature of Missouri for the purpose above stated.

"The resolution was adopted.

ANNOUNCEMENTS.

"The Speaker appointed the following committee on the part of the House to meet with the like committee of the Legislature of Missouri: Jaquins, Ravenscraft, and Johnson of Nemaha."

(House Journal of 1897, pages 428, 429.)

"FEBRUARY 17th, 1897.

"By unanimous consent, Mr. Jaquins, chairman of the select committee, submitted the following report:

"MR. SPEAKER: Your Committee on Live Stock, to whom was referred joint conference committee to meet a like committee from the State of Missouri, at Kansas City, beg leave to make the following report:

"MR. SPEAKER: Your Committee on Live Stock, appointed under Senate concurrent resolution by yourself and the chairman of this committee, in company with the Senate committee, went to Kansas City, Mo., and there met the committee from the Assembly of the State of Missouri at the Midland Hotel. We organized said conference committee on February 15, at 10 A. M., by electing the Hon. J. H. Whitecotton, of the Missouri Assembly, as chairman, and Senator Morrow, of the Kansas Legislature, as secretary of said joint committee.

"We then thoroughly discussed the merits of substitute for House bill No. 87, as reported by the Committee on Live Stock in this House, and your committee on conference decided that it would be judicious and wise legislation, and practically agreed to said substitute, and that it would be a good bill to enact into law to produce uniform legislation in both States.

"Your committee found the committee from the Missouri Assembly great, broad-minded, intelligent gentlemen, thoroughly imbued with a spirit of substantial and true reform in the interest of the whole people, rather than men bowed down to the greed of corporations and corporation attorneys.

"Hoping, Mr. Speaker, that the results of our labor will be gratifying to yourself and the members of this House, we most respectfully submit this report.

EDWARD JAQUINS, *Chairman.*"

(House Journal of 1897, page 598; R. 814-817.)

EXHIBIT "F."

SUMMARY

Of Annual Statement of Receipts and Disbursements of 275 State Banks doing business in the State of Kansas for the year ending December 31, 1897.

RECEIPTS.

Undivided profits January 1, 1897	$392,895.39
Interest and discount	1,345,196.01
Exchange	128,233.51
Rents	51,847.58
Commissions	26,091.89
Profit on real estate sold	2,473.51
Assessment on capital	4,000.00
Increase of capital	5,400.00
Reduction of capital	188,201.00
From surplus	89,551.11
All other sources	42,439 76
Total	$2,276,329.76

DISBURSEMENTS.

Officers' salaries	$355,323.57
Clerk hire	68,009.84
Rent	27,531.94
Insurance	8,021.42
Taxes	94,974.00
Interest on deposits	153,453.00
Interest on borrowed money	24,208.50
Dividends	283,018.55
Carried to surplus	132,203.15
Bad paper charged off	317,072.27
Loss on real estate sold	6,038.85
Depreciation of real estate	132,957.62
Depreciation of furniture and fixtures	30,050.27
All other purposes	182,343.26
Balance undivided profits	461,033.52
Total	$2,276,329.76

Average capital invested during year	$6,106,665.68
Gross earnings	1,596,282.26
Per cent. of gross earnings to capital	26.13
Number of banks paying dividends	146
Capital on which dividends were paid	3,574,900.00
Average dividend paid (per cent.)	7.91
Number of banks paying no dividend	129
Capital on which no dividend was paid	2,731,765.68
Per cent. of dividends to total capital	4.63
Per cent. of officers' salaries to total capital	5.82
Per cent. of taxes to total capital	1.55

(Fourth Biennial Report of State Bank Commissioner of Kansas, 1897-98, page 218.)

EXHIBIT "G."

SUMMARY

Of Annual Statement of Receipts and Disbursements of 95 Private Banks doing business in the State of Kansas for the year ending December 31, 1897.

RECEIPTS.

Undivided profits, January 1st, 1897	$131,521.13
Interest and discount	376,817.64
Exchange	36,187.31
Rents	22,467.35
Commissions	10,922.76
Profit on real estate sold	1,680.61
Reduction of capital	69,000.00
Received from owners	33,322.67
Increase of capital	6,000.00
Surplus charged off	13,900.00
All other sources	5,827.97
Total	$707,627.44

DISBURSEMENTS.

Officers' salaries	$69,385.02
Clerk hire	30,022.00
Rent	5,432.98
Insurance	2,759.59
Taxes	28,328.11
Interest on deposits	34,597.87
Interest on borrowed money	5,066.46
Dividends	113,829.97
Carried to surplus	54,766.56
Bad paper charged off	135,643.94
Loss on real estate sold	347.15
Depreciation of real estate	29,174.50
Depreciation of furniture and fixtures	11,530.67
All other purposes	48,726.34
Balance undivided profits	138,024.28
Total	$707,627.44

Average capital invested during year	$132,943.51
Gross earnings	585,404.77
Per cent. of gross earnings to capital	44.00
Number of banks paying dividends	48.00
Capital on which dividend was paid	627,380.00
Average dividend paid (per cent.)	18.14
Number of banks paying no dividend	47
Capital on which no dividend was paid	702,051.57
Per cent. of dividends to total capital	8.56
Per cent. of officers' salaries to total capital	8.22
Per cent. of taxes paid to total capital	2.13

(Fourth Biennial Report of State Bank Commissioner of Kansas, 1897-98, page 219.)

EXHIBIT "H."

EXTRACTS FROM THE AUDITOR'S REPORT FOR THE STATE OF KANSAS FOR 1897-98, CONCERNING MUNICIPAL BONDS AND THE RATES OF INTEREST THEREON.

Name of County, Township, etc.	*Purpose Created.*	*Date of Issue.*	*Date of Maturity.*	*Rate.*	*Amount.*
ALLEN COUNTY.					
Marmaton township	St. L. S. & W. R. R.	Sept. 1, 1887.	Sept. 1, 1901.	7	$30,000
Iola township	" "	" "	" "	7	35,500
Elm township	" "	" "	" "	7	20,000
Iola City	" "	" "	" "	7	26,500
ANDERSON COUNTY.					
Anderson county	L. L. & G. R. R.	Jan. 1, 1870.	Jan. 1, 1900.	7	9,000
Ozark township	St. L. & F. R. R.	July 31, 1886.	July 31, 1916.	7	16,000
Indian Creek township	" "	July 31, 1887.	July 15, 1917.	7	10,000
BARBER COUNTY.					
Barber county	Funding			8	143,000
Medicine Lodge township	Bridge bonds	Jan. 30, 1886.	July 1, 1916.	7	10,000
Kiowa township	Railroad bonds	April 1, 1887.	July 1, 1907.	7	25,000
Hazelton township	" "	Mar. 1, 1889.	Mar. 1, 1907.	7	15,000
BUTLER COUNTY.					
El Dorado City	St. L. Ft. S. & W. Ry	Jan. 22, 1883.	Jan. 22, 1903.	7	2,500
" "	Improvement	Aug. 1, 1883.	Aug. 1, 1903.	7	7,000
Augusta township	St. L. & S. F. R. R.	June 5, 1880.	May 5, 1910.	7	23,000
Benton township	St. L. Ft. S. & W. Ry	Jan. 1, 1883.	July 1, 1903.	7	6,500
Bruno township	St. L. & S. F. R. R.	June 5, 1880.	May 5, 1910.	7	17,000
CHEROKEE COUNTY.					
City of Columbus	R. R. funding bonds	Oct. 24, 1876.	Oct. 24, 1896.	10	12,000
Weir City	Water bonds	June 30, 1887.	June 30, 1897.	10	1,000
CHEYENNE COUNTY.					
Wano township	Building bridge	Jan. 16, 1889.	Jan. 1, 1899.	10	1,000
CLAY COUNTY.					
Clay county	J. C. & Ft. K. R. R.	Feb. 16, 1872.	Feb. 16, 1892.	7	13,000
" "	Bridge	Aug. 4, 1885.	Aug. 4, 1905.	7	10,000
CLOUD COUNTY.					
Elk township	Bridge	July 1, 1878.	July 1, 1898.	10	8,000
" "	Railroad	Sept. 1, 1879.	Sept. 1, 1899.	8	7,850
" "	"	Oct. 1, 1879.	Oct. 1, 1898.	8	12,150
Solomon township	"	Nov. 1, 1879.	Nov. 1, 1899.	8	7,000
" "	Bridge	Jan. 1, 1885.	Jan. 1, 1895.	8	2,000
COFFEY COUNTY.					
Avon township	K. C. B. & S. F. Ry.	Mar. 31, 1877.	Mar. 31, 1907.	7	87,000
Leroy township	St. L. & E. R. R.	Jan. 21, 1887.	Jan. 21, 1917.	7	5,000
Liberty township	Interstate R. R.	July 14, 1887.	Apl. 25, 1917.	7	10,000
" "	" "	Apl. 25, 1887.	July 14, 1917.	7	5,000
Neosho township	" "	Oct. 6, 1886.	Apl. 25, 1917.	7	10,000
ELK COUNTY.					
Elk Falls township	K. C. L. & S. K. Ry.	Oct. 1, 1879.	Oct. 1, 1909.	7	15,000
Wild Cat township	" " "	" "	" "	7	4,000
Pawpaw township	K. C. & S. Ry	Jan. 1, 1880.	Jan. 1, 1910.	8	8,000
Howard township	" " "	" "	" "	8	24,000
Greenfield township	K. C. L. & S. K. Ry.	Dec. 1, 1879.	Dec. 1, 1909.	7	11,500
HAMILTON COUNTY.					
Syracuse township	Bridge	June 1, 1887.	July 1, 1897.	8	4,500
Syracuse City	Improvement	Jan. 1, 1888.	July 1, 1908.	7	3,000
" "	City hall	July 2, 1888.	July 1, 1909.	7	7,500
Coolidge City	School bonds	June 5, 1887.	Jan. 1, 1902.	7	11,000
HASKELL COUNTY.					
Old Review township	Poor-farm	June 6, 1889.	July 6, 1909.	7	1,500

EXHIBIT "H"—CONCLUDED.

Name of County, Township, etc.	*Purpose Created.*	*Date of Issue.*	*Date of Maturity.*	*Rate.*	*Amount.*
HODGEMAN COUNTY.					
Sterling township	Bridge	Oct. 10, 1885.	Oct. 10, 1897.	8	$500
" "			Oct. 10, 1898.	8	500
" "			Oct. 10, 1899.	8	500
" "			Oct. 10, 1900.	8	500
KEARNY COUNTY.					
South Side township		Dec. 21, 1886.	1906.	8	12,578
Lakin township	Bridge	Jan. 18, 1896			
LINN COUNTY.					
Linn county	Jail and sheriff's res.	Aug. 25, 1896.	Feb. 1, 1909.	7	
Blue Mound township	St. L. & E. R. R.	May 20, 1895.	Apl. 10, 1912.	7	25,000
LABETTE COUNTY.					
Oswego township	M. W. Ry	Dec. 30, 1876.	Jan. 1, 1897.	10	2,200
Richland township	M. K. & T. Ry	July 1, 1870.	July 1, 1900.	7	50,000
Pleasant township	St. L. W. & W. Ry	Nov. 14, 1879.	July 1, 1909.	7	9,000
M'PHERSON COUNTY.					
Smoky Hill township	Railroad	Sept. 3, 1879.	Sept. 3, 1909.	7	14,740
McPherson township	"	Jan. 1, 1880.	Jan. 1, 1910.	7	20,000
MONTGOMERY COUNTY.					
Montgomery county	L. L. & G. R. R.	July 2, 1877.	July 2, 1897.	7	153,000
Louisburg township	S. K. R. R	Aug. 7, 1879.	Aug. 1, 1909.	7	15,000
MITCHELL COUNTY.					
Mitchell county	A. S. V. & D. Ry.	Sept. 16, 1878.	Sept. 16, 1908.	8	50,000
Cawker township	" "	May 31, 1879.	May 31, 1909.	8	20,000
Glen Elder township	" "	" "	" "	8	5,000
NEOSHO COUNTY.					
Mission township	Bridge		June 1, 1902.	10	40,000
NORTON COUNTY.					
Norton City	C. K. & N. R. R.	Dec. 1, 1880.	Dec. 1, 1900.	10	200
OSBORNE COUNTY.					
Sumner township	Railroad	Dec. 20, 1879.	Dec. 20, 1909.	8	15,000
Penn township	"	Aug. 15, 1879.	Sept. 15, 1909.	8	15,000
RICE COUNTY.					
Lyons City	Waterworks	Sept. 22, 1885.	Sept. 1, 1900.	7	2,000
" "	"	" "	Sept. 1, 1907.	7	3,000
SALINE COUNTY.					
City of Brookville	City hall	July 1, 1879.	July 1, 1899.	10	2,000
SCOTT COUNTY.					
Ninnescah township	St. L. Ft. S. & W. Ry.	Aug. 1, 1884.	Aug. 1, 1904.	7	22,000
Ohio township	" " "	" "	" "	7	10,000
SUMNER COUNTY.					
City of Caldwell	Funding	Aug. 11, 1882.	Aug. 11, 1897.	8	3,000
" "	Bridge	" "	" "	8	2,500
WASHINGTON COUNTY.					
Washington township	Railroad	July 1, 1877.	Jan. 1, 1907.	10	26,000
WILSON COUNTY.					
Center township	C. V. & L. Ry	July 1, 1886.	July 1, 1916.	7	25,000
Prairie township	" "	" "	" "	7	15,000
Center township	C. K. & W. R. R.	Nov. 1, 1886.	Nov. 1, 1916.	7	25,000

(Extracts from the Eleventh Biennial Report of the Auditor of State of the State of Kansas for 1897–98. See pages 186–223.)

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